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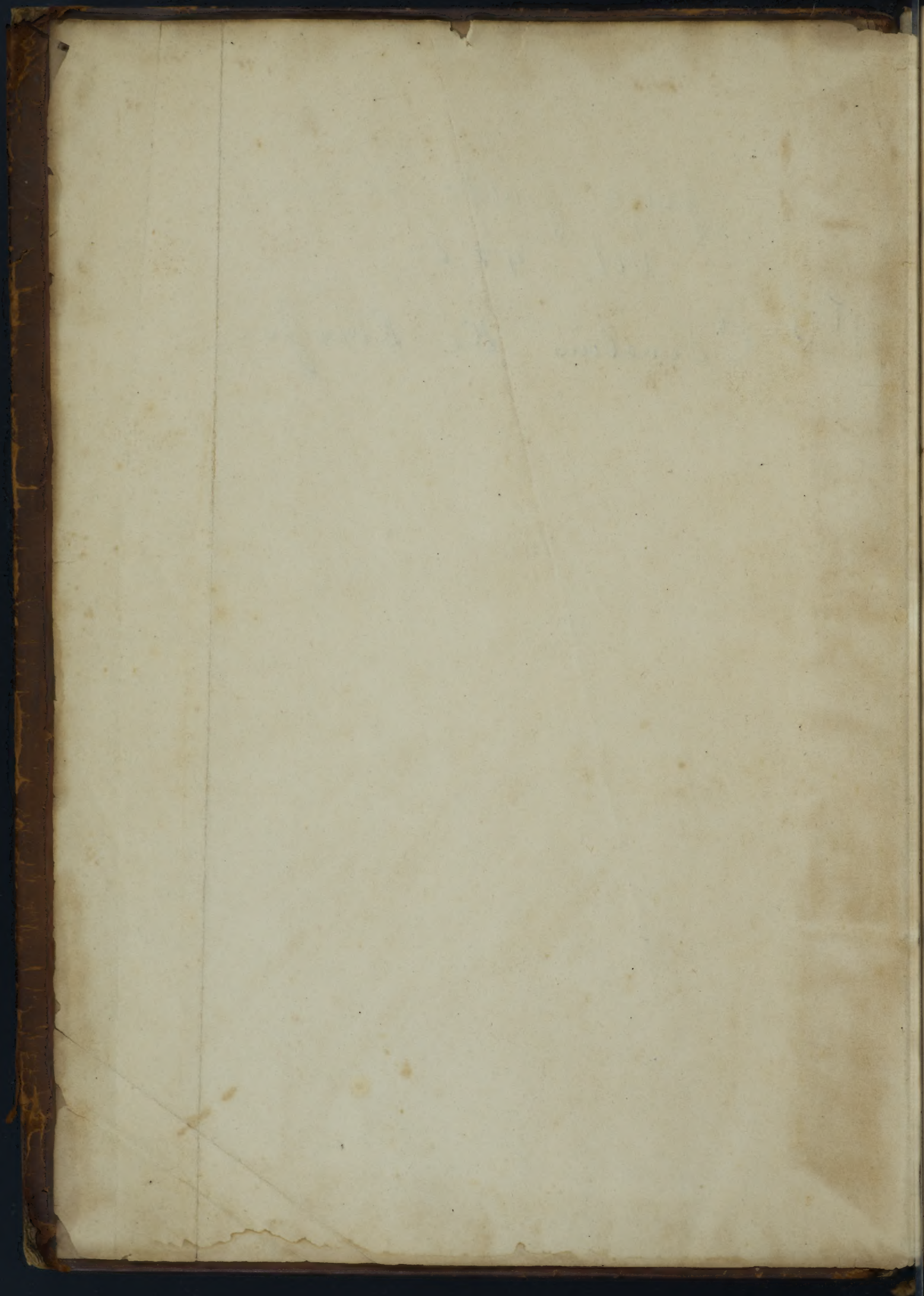
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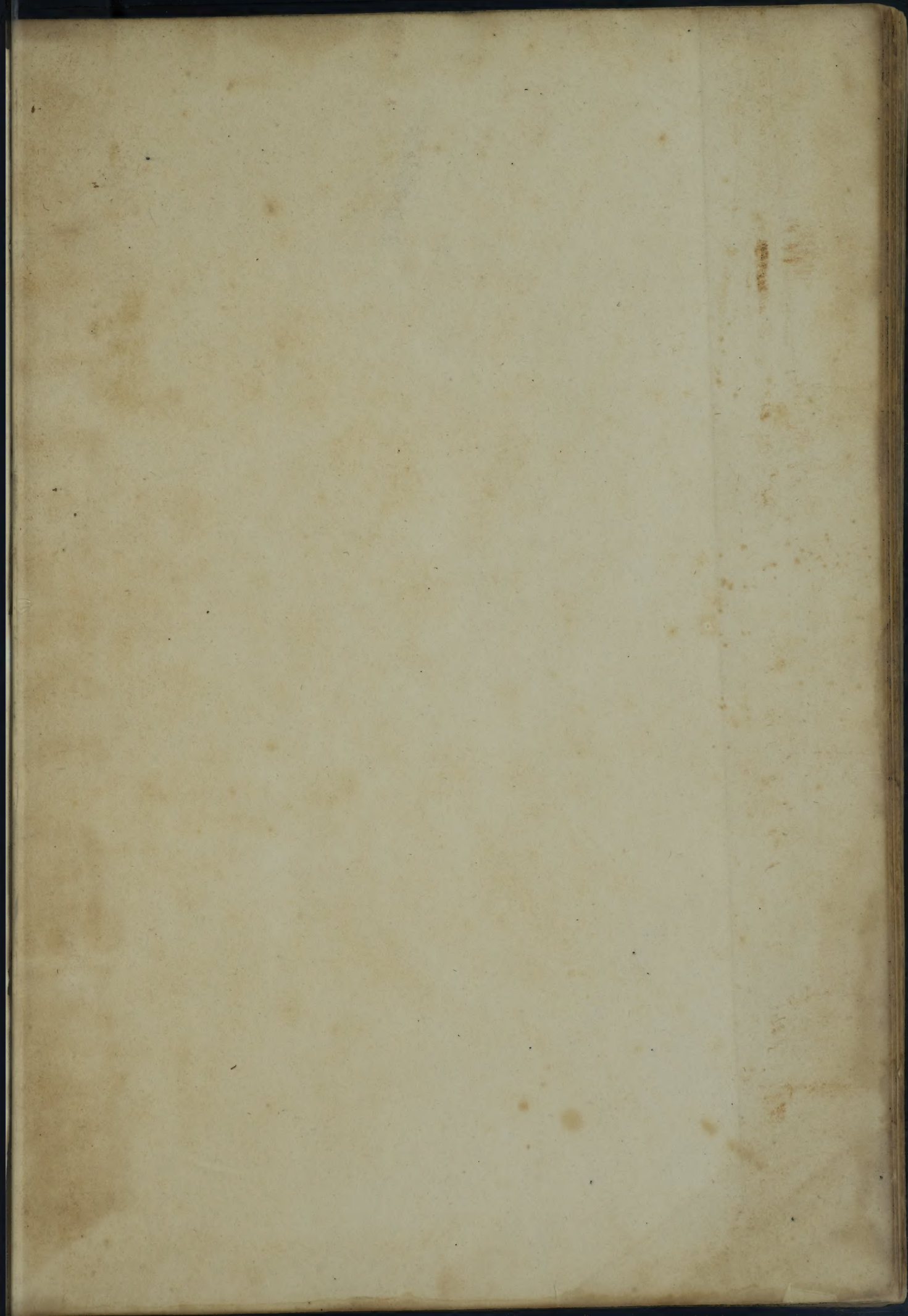
Judge Gould's Lectures.

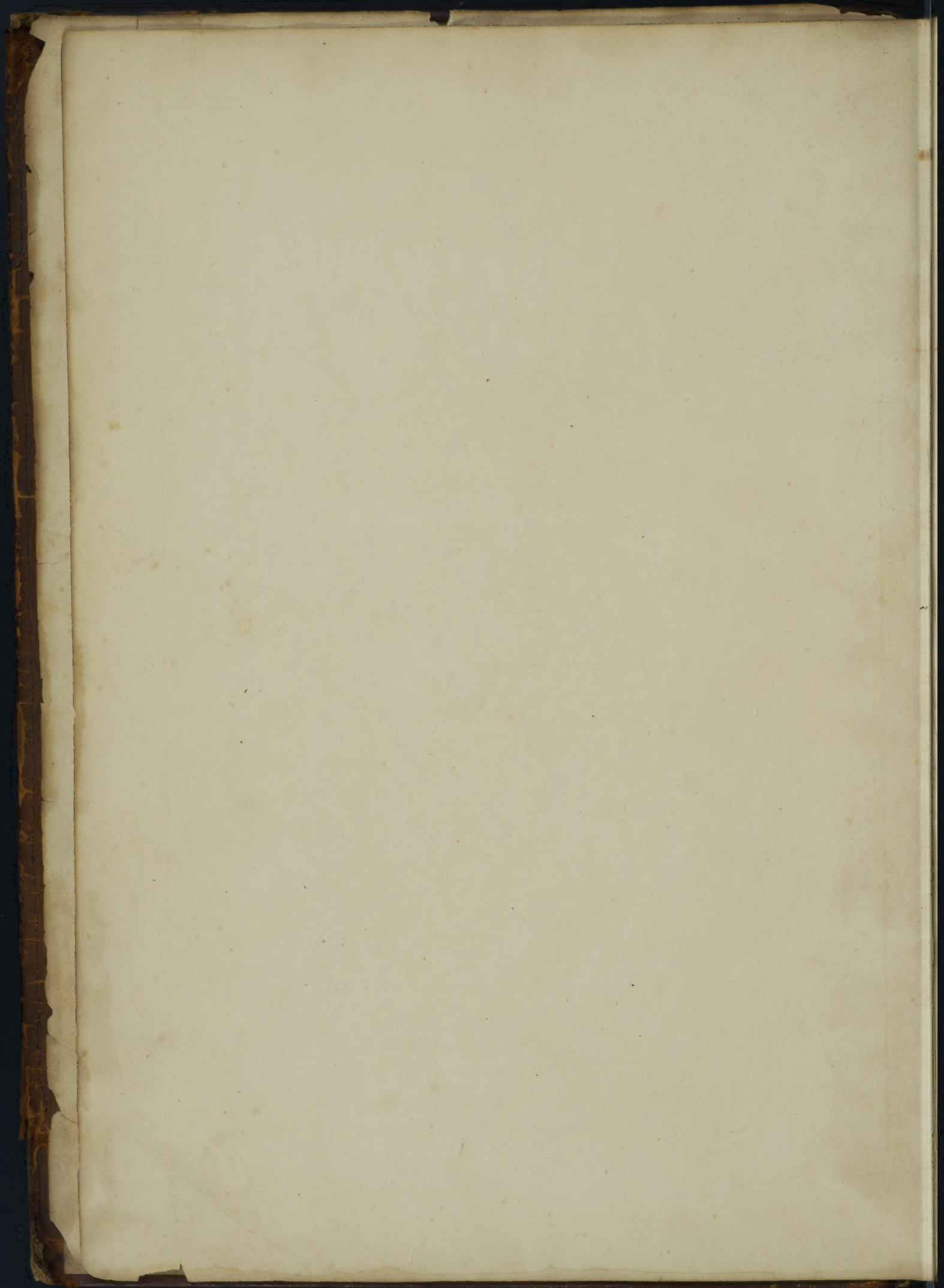
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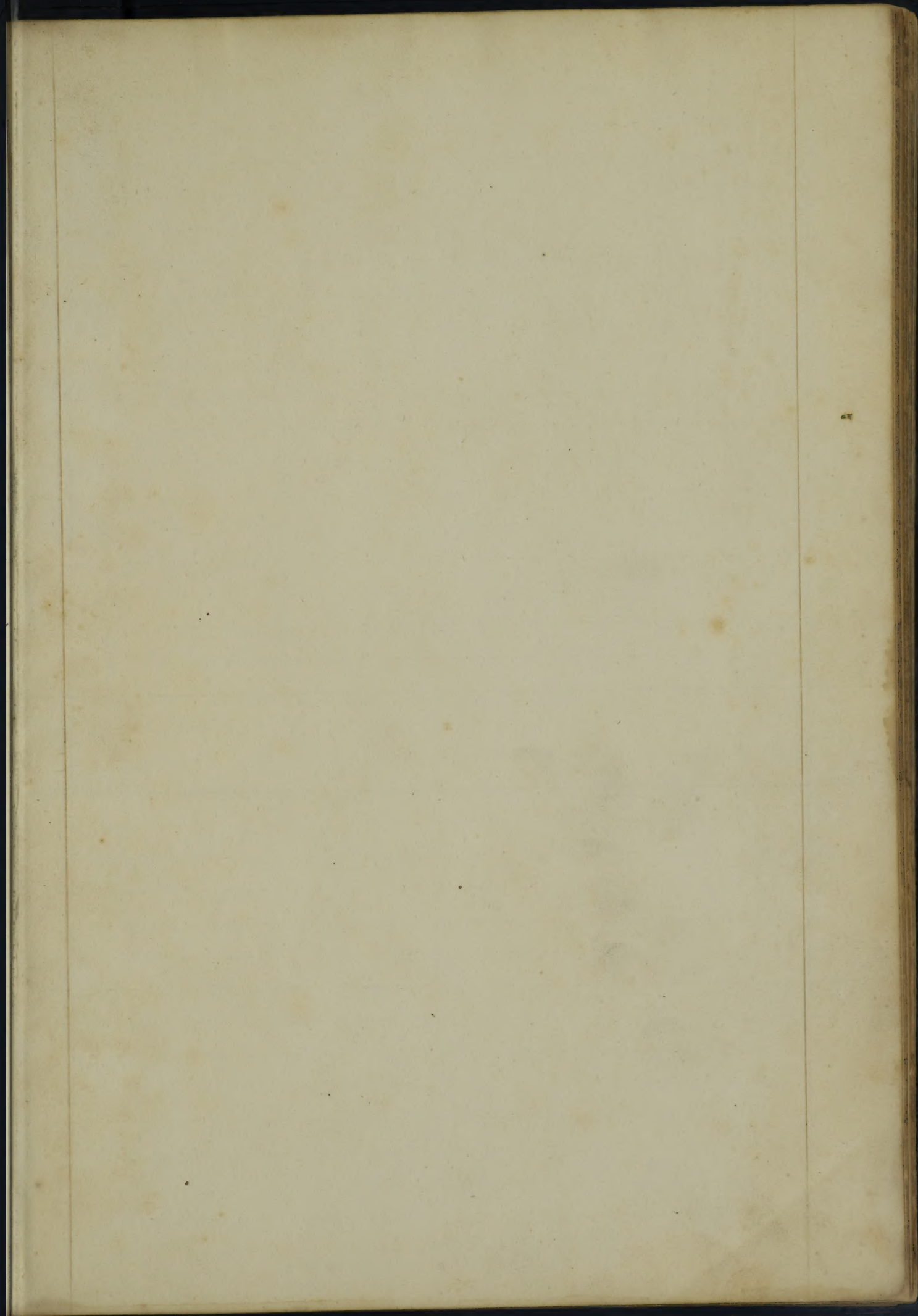
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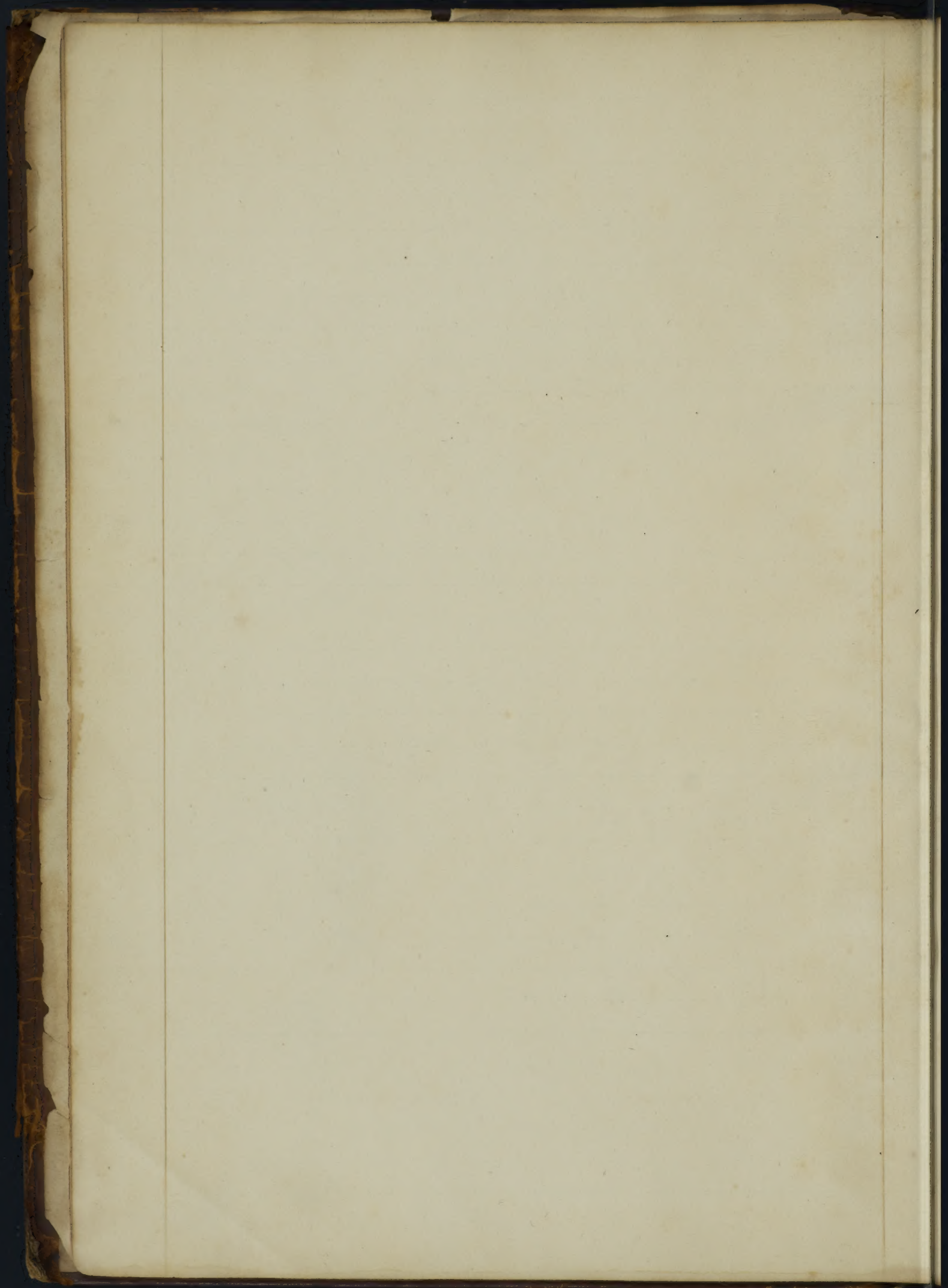
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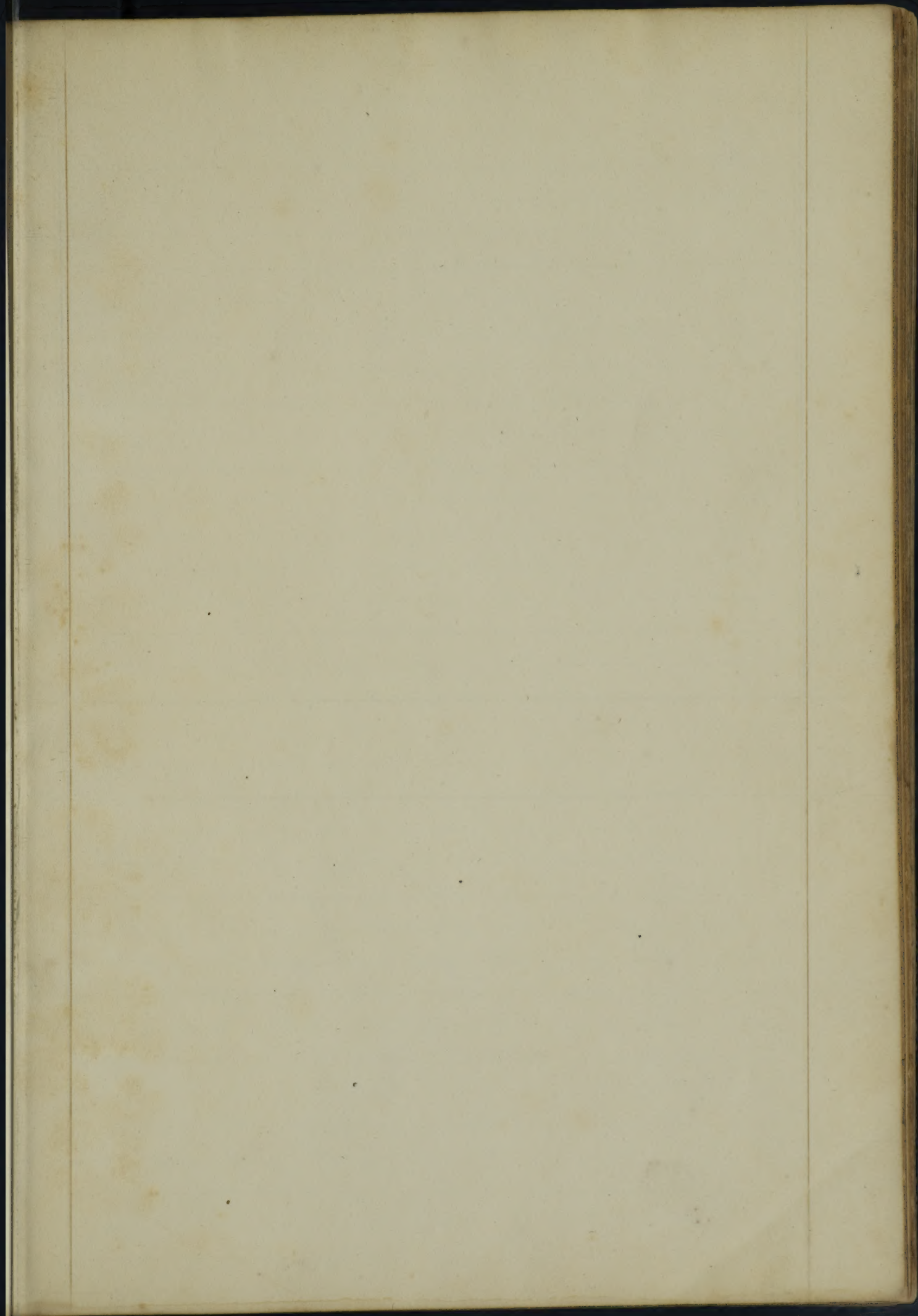


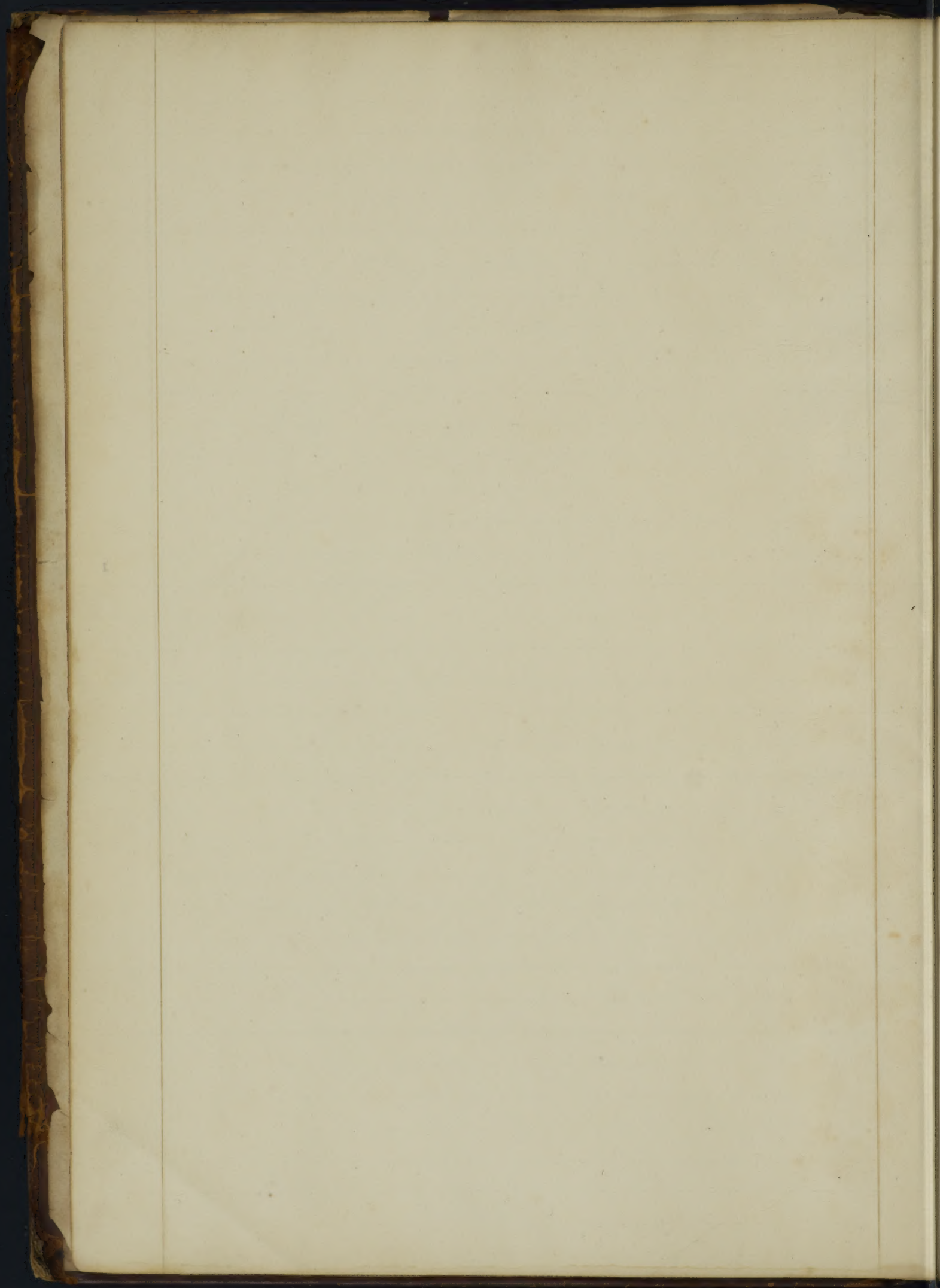


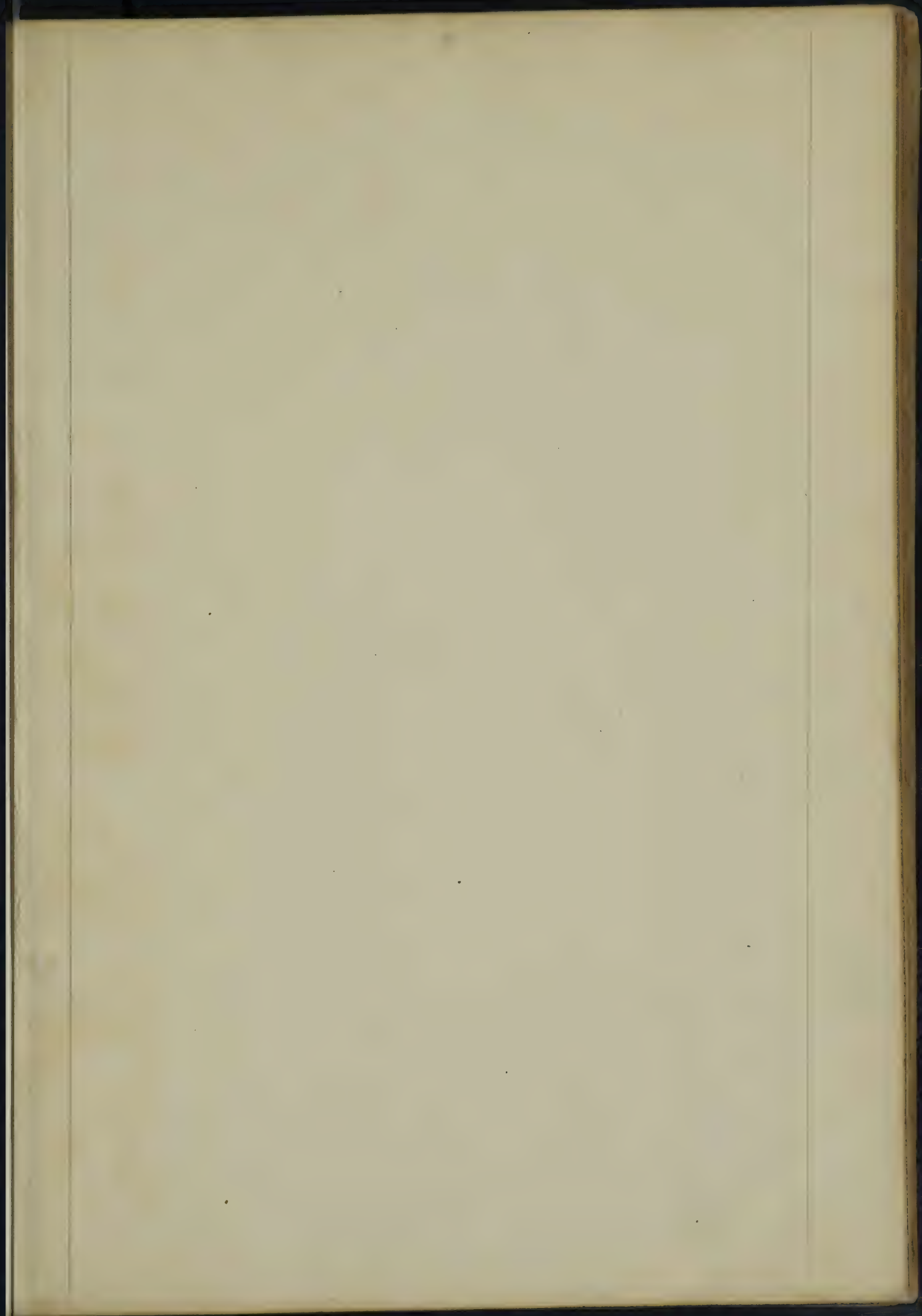


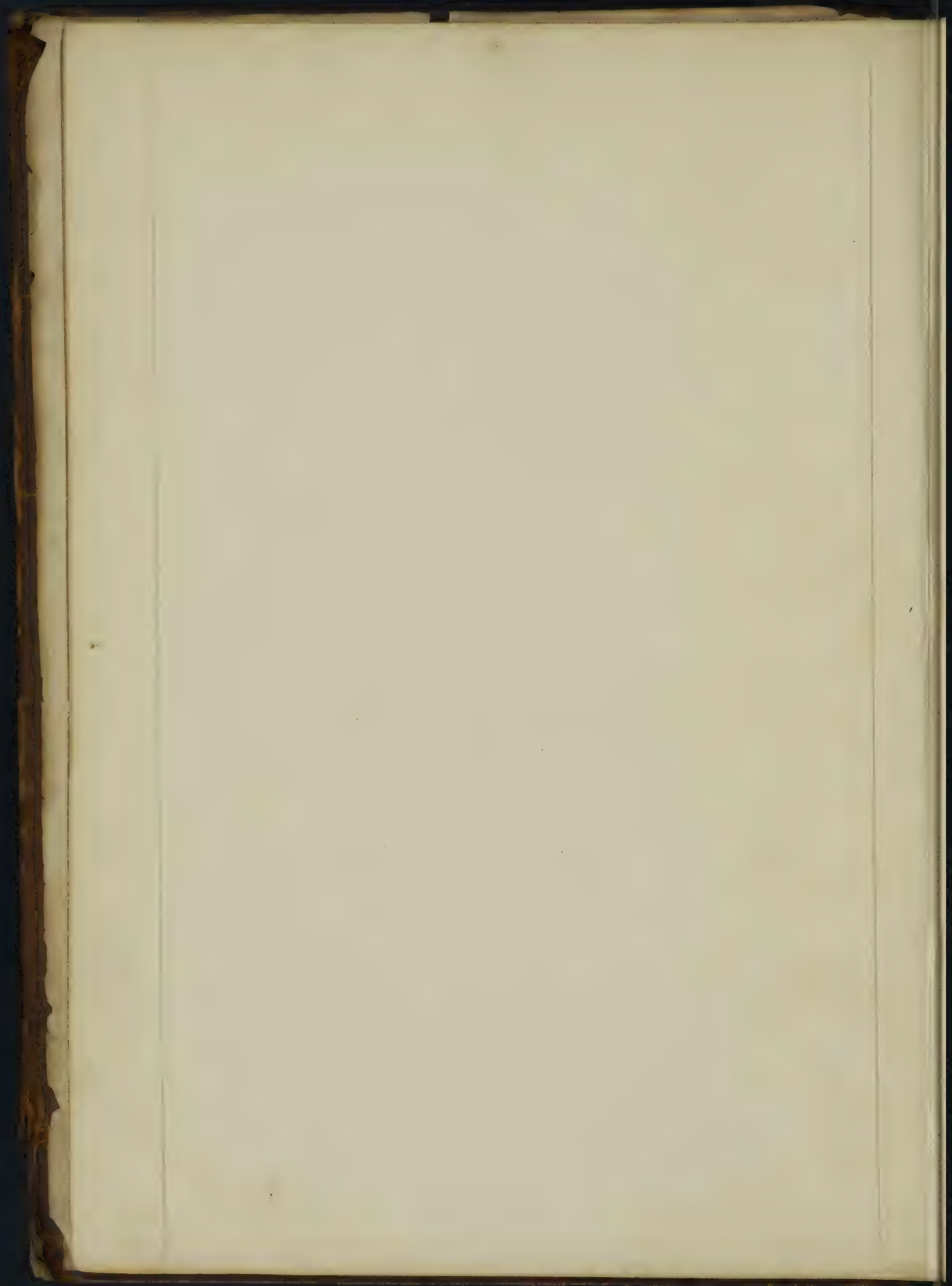


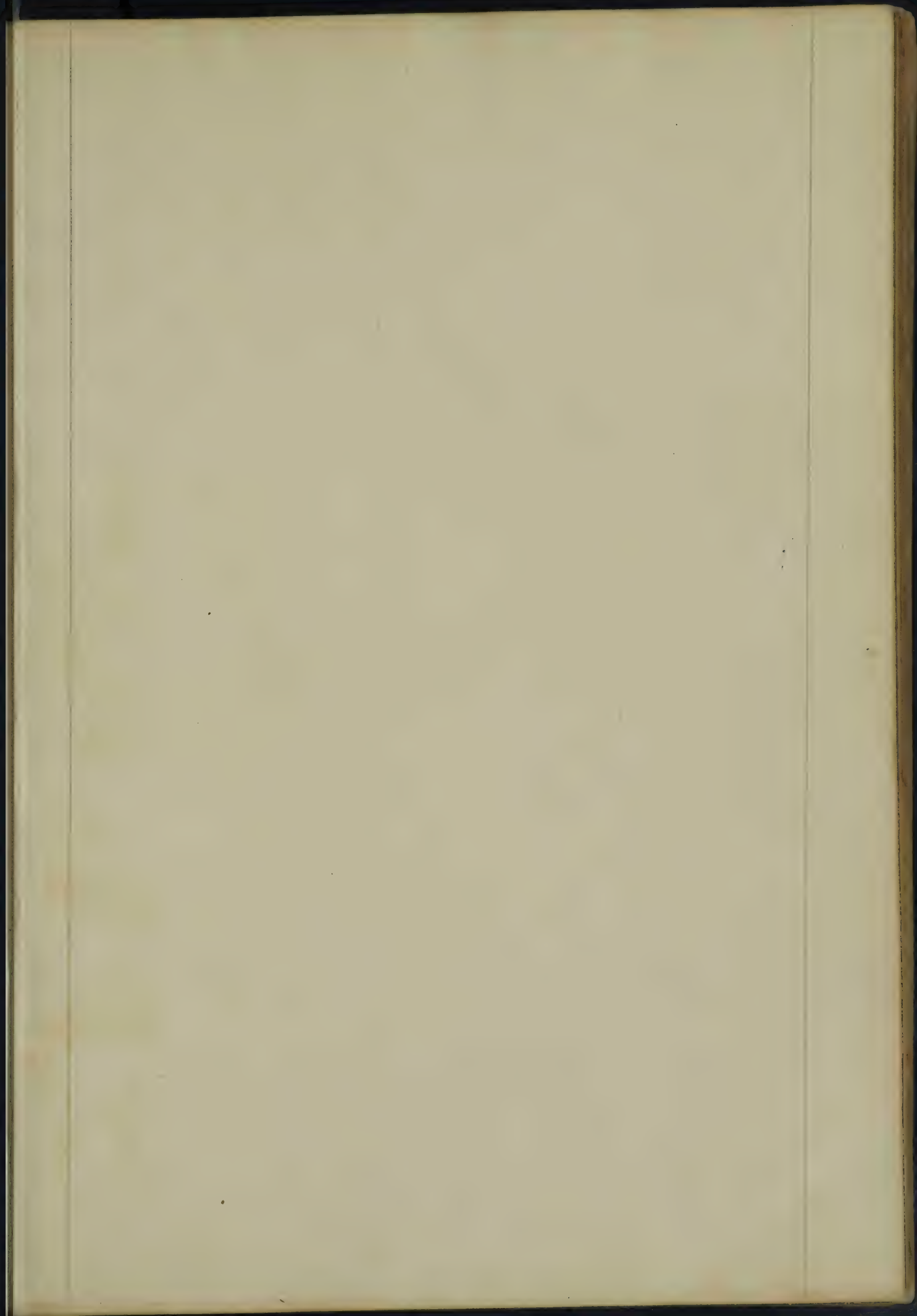


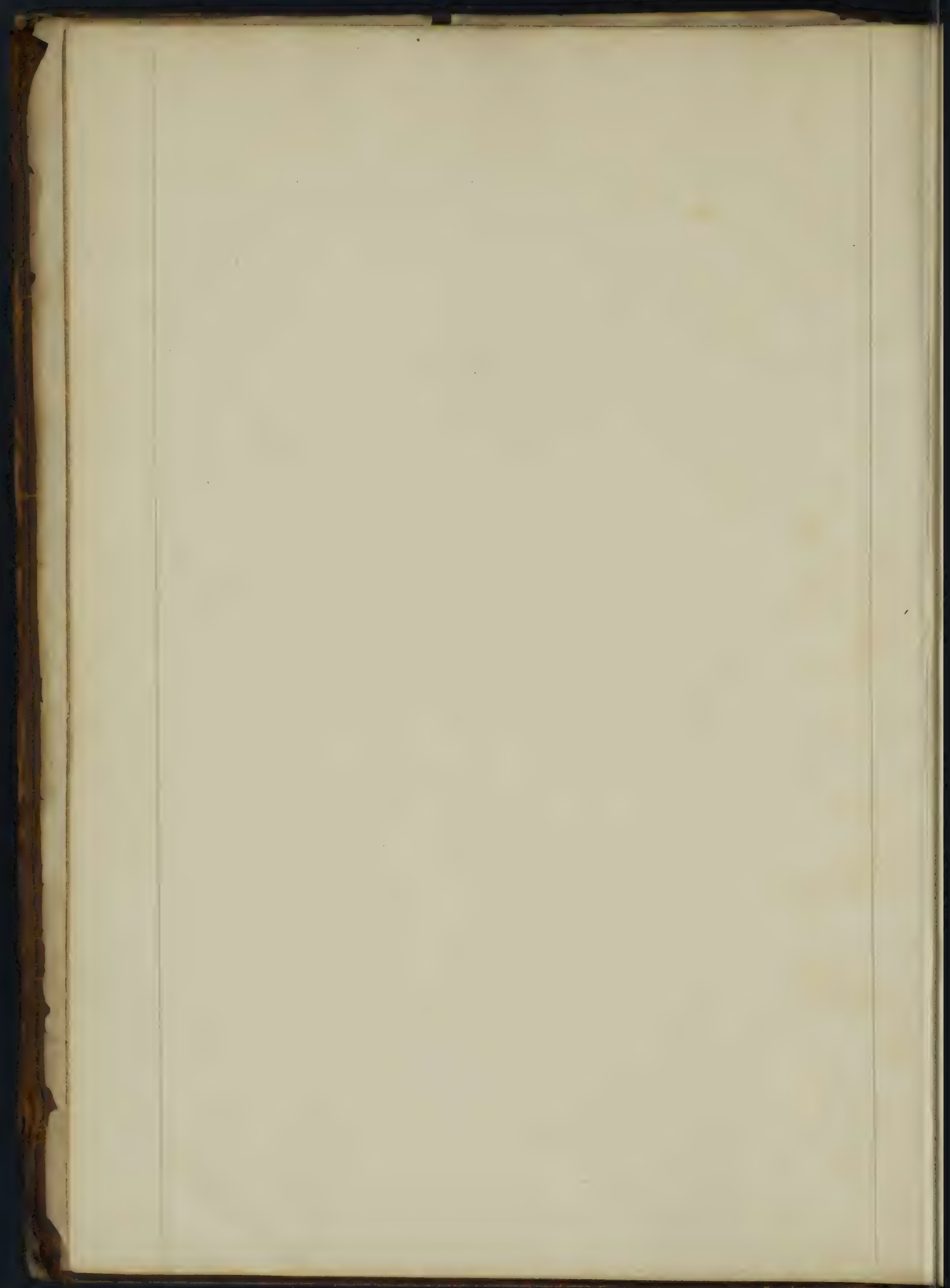


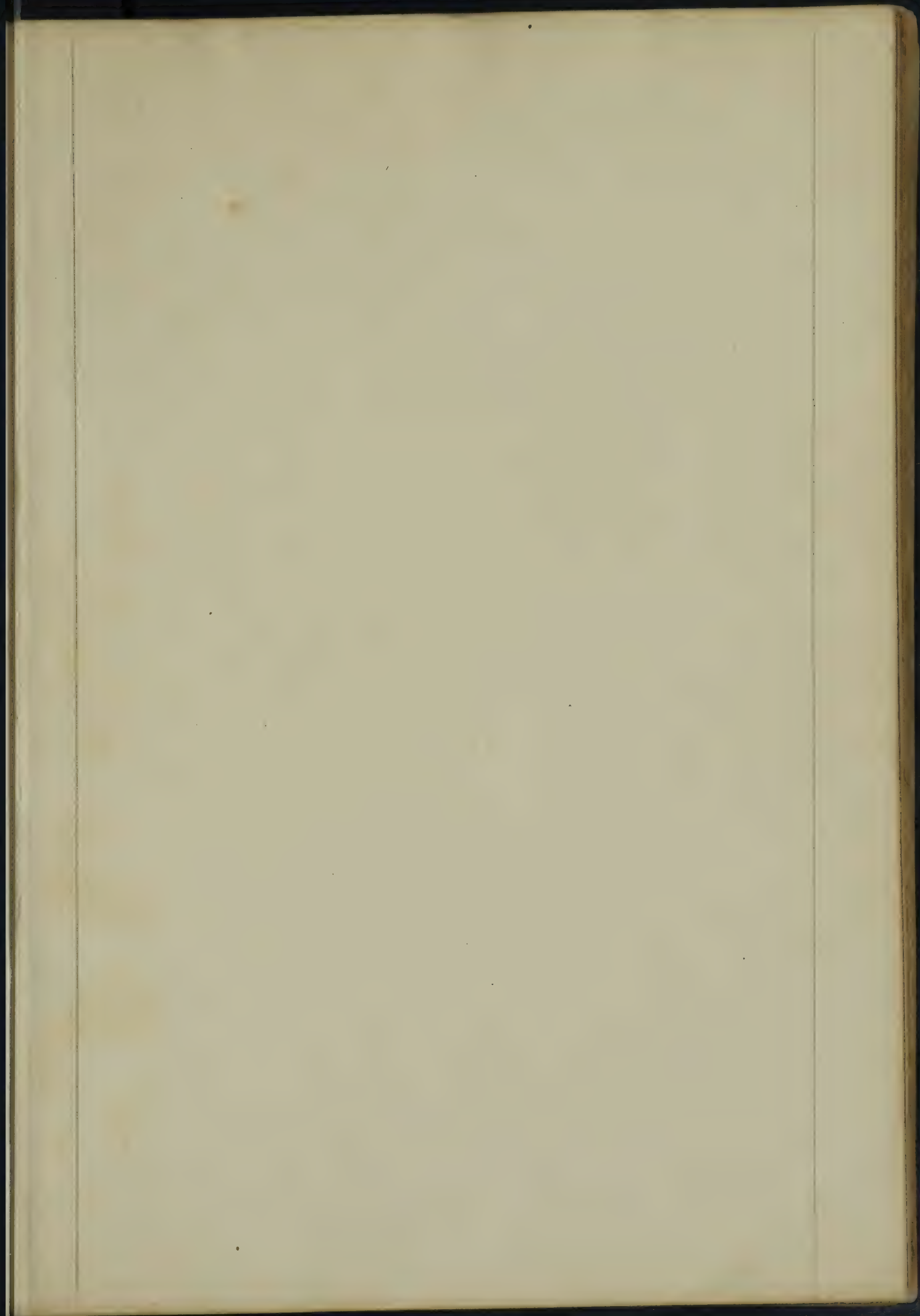


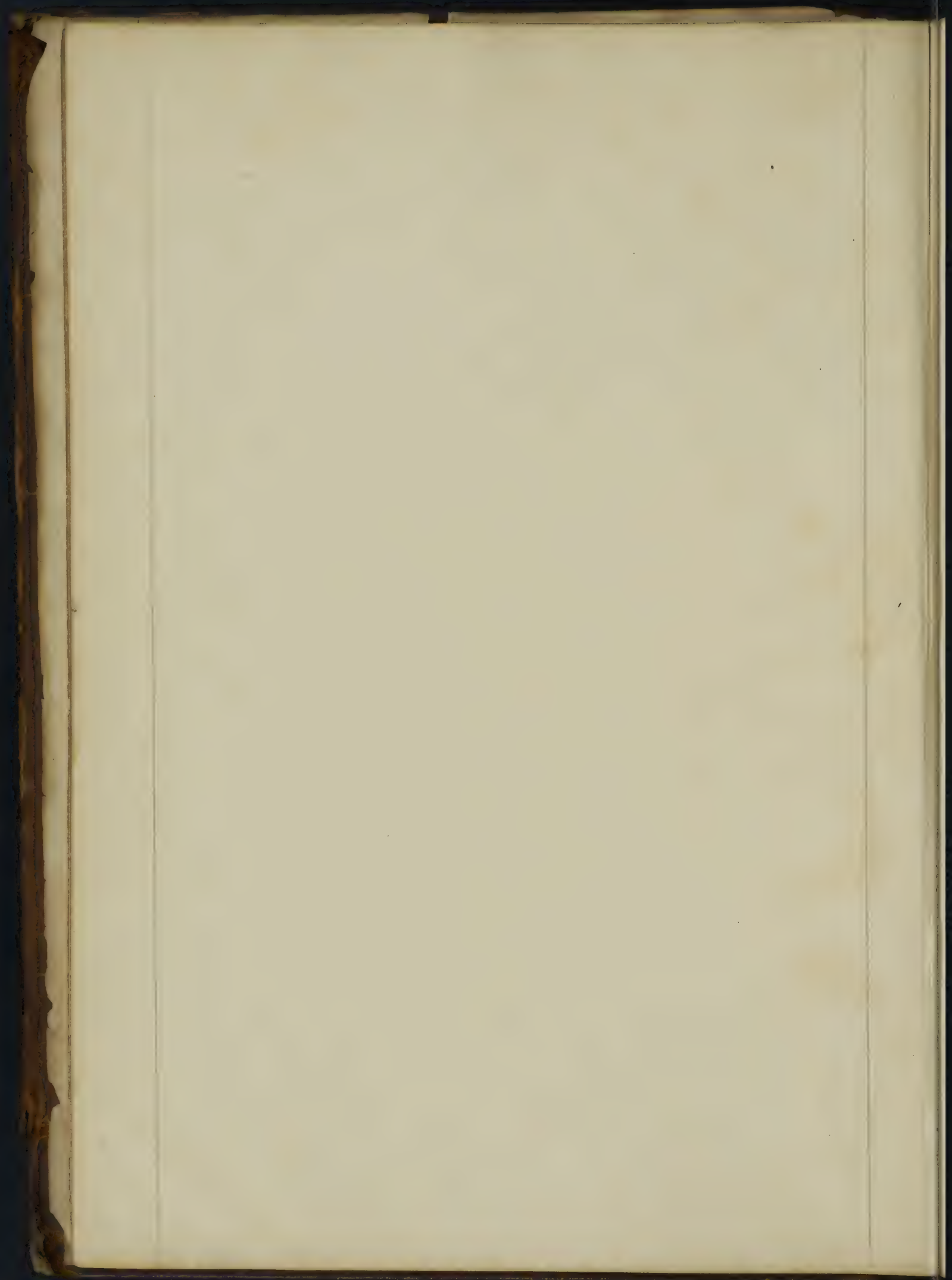


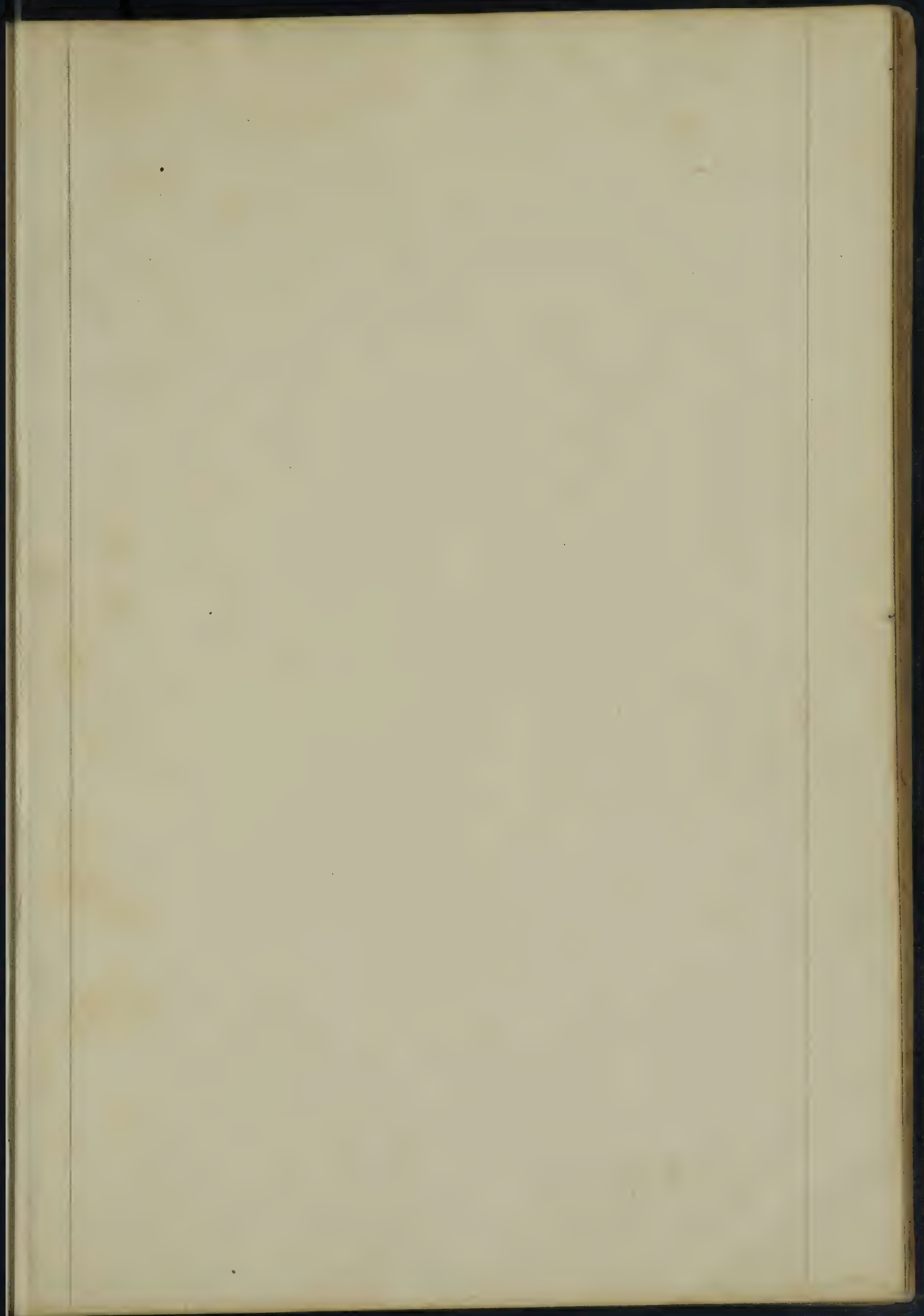


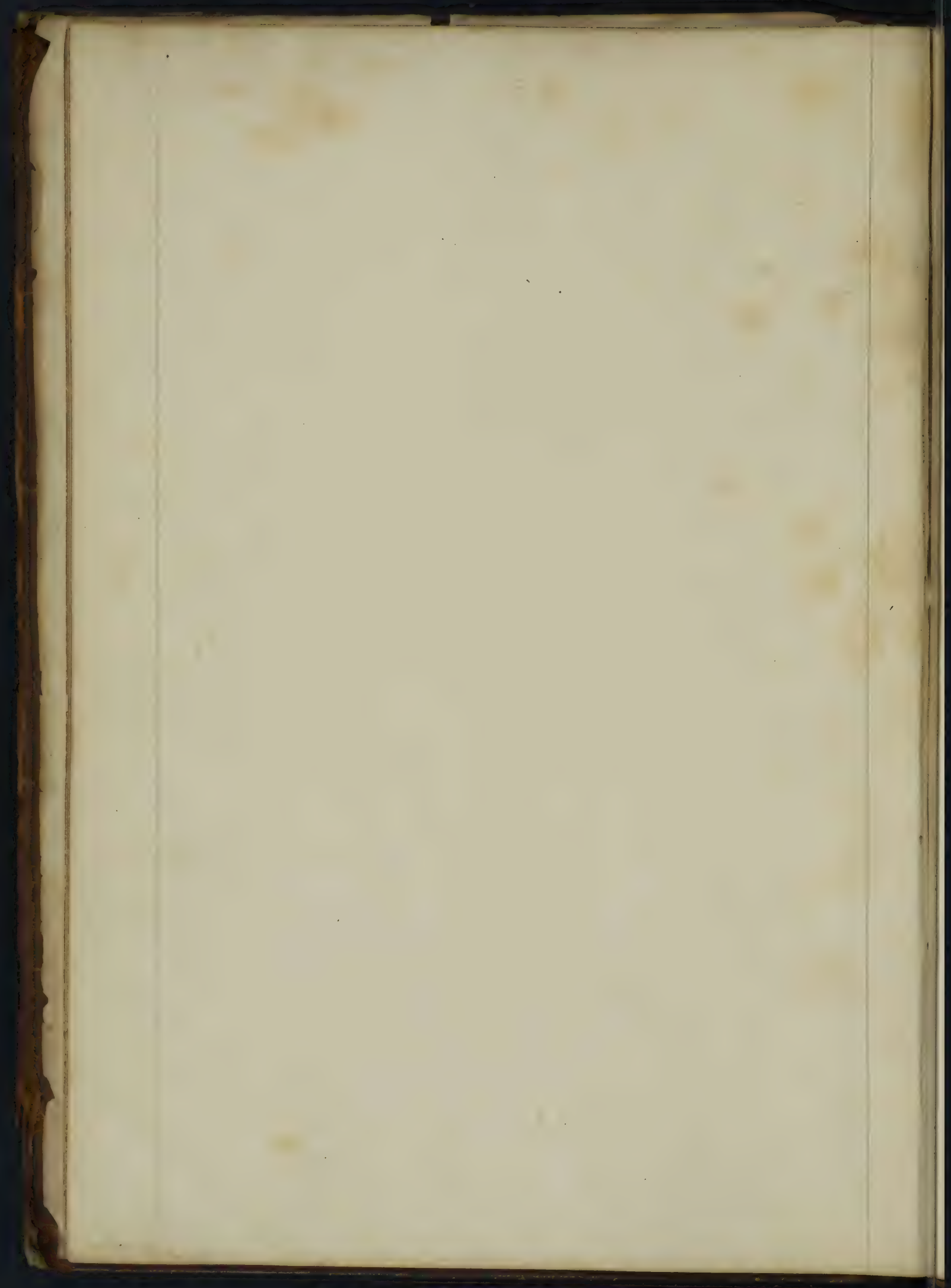


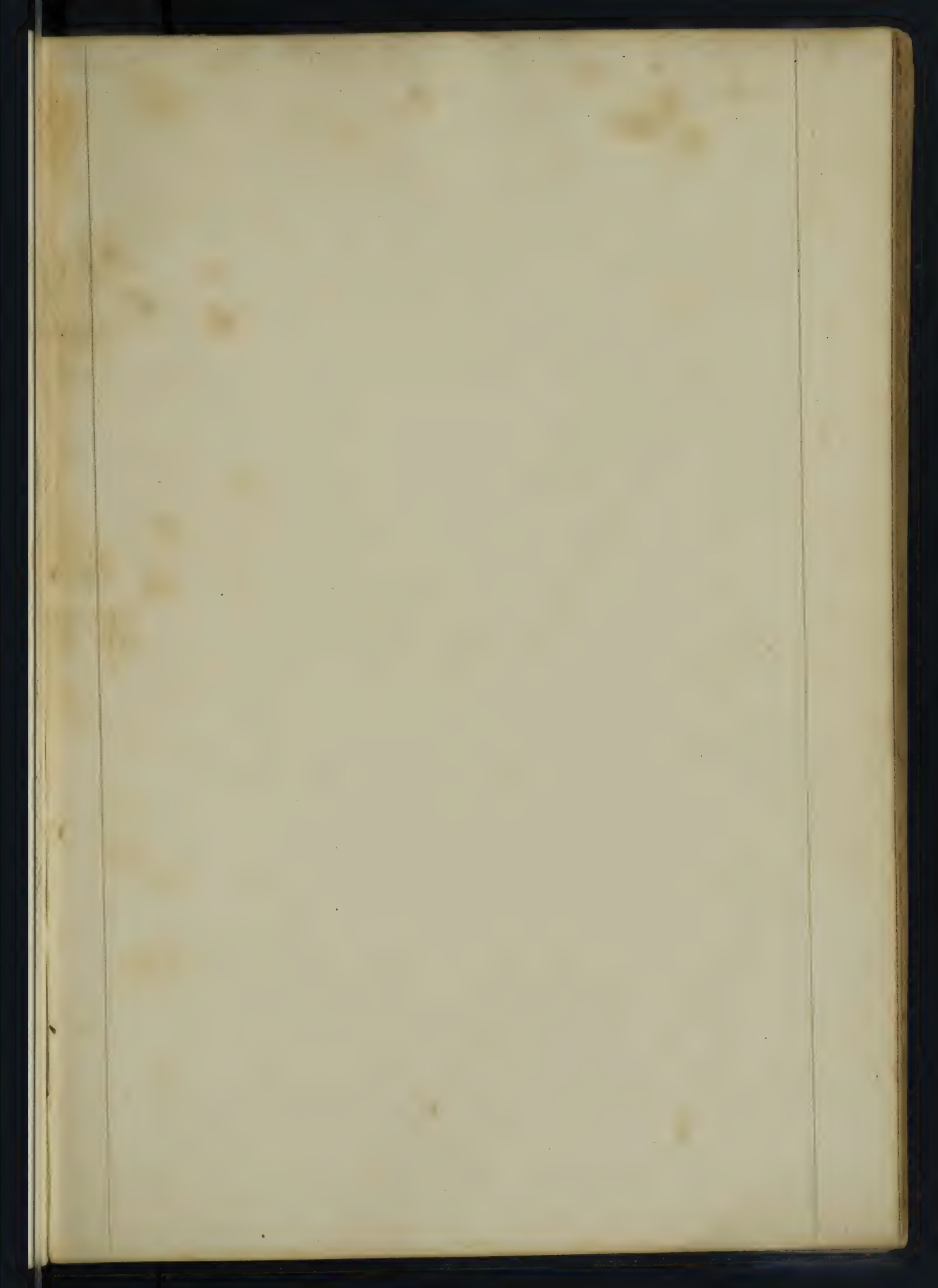


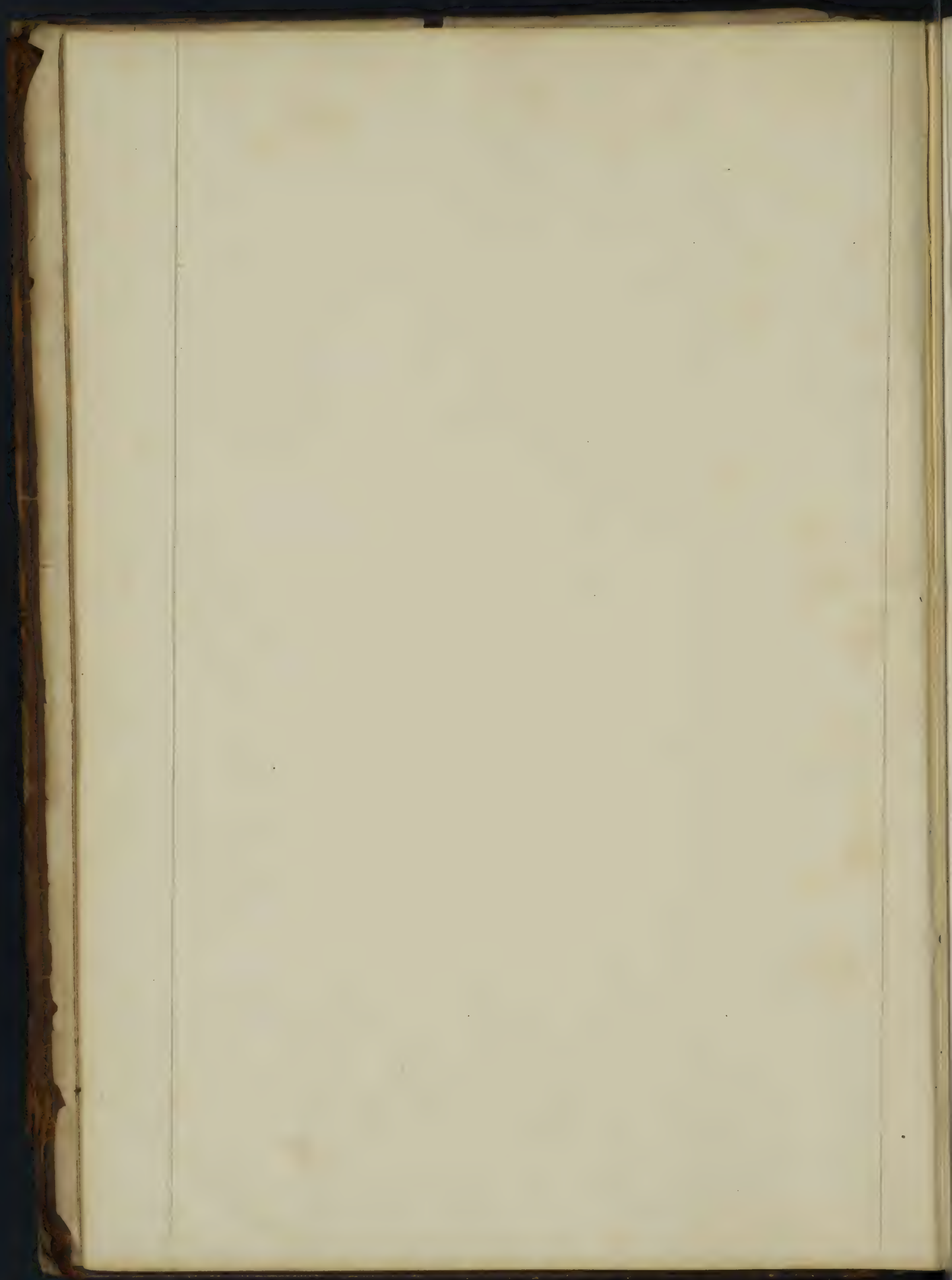


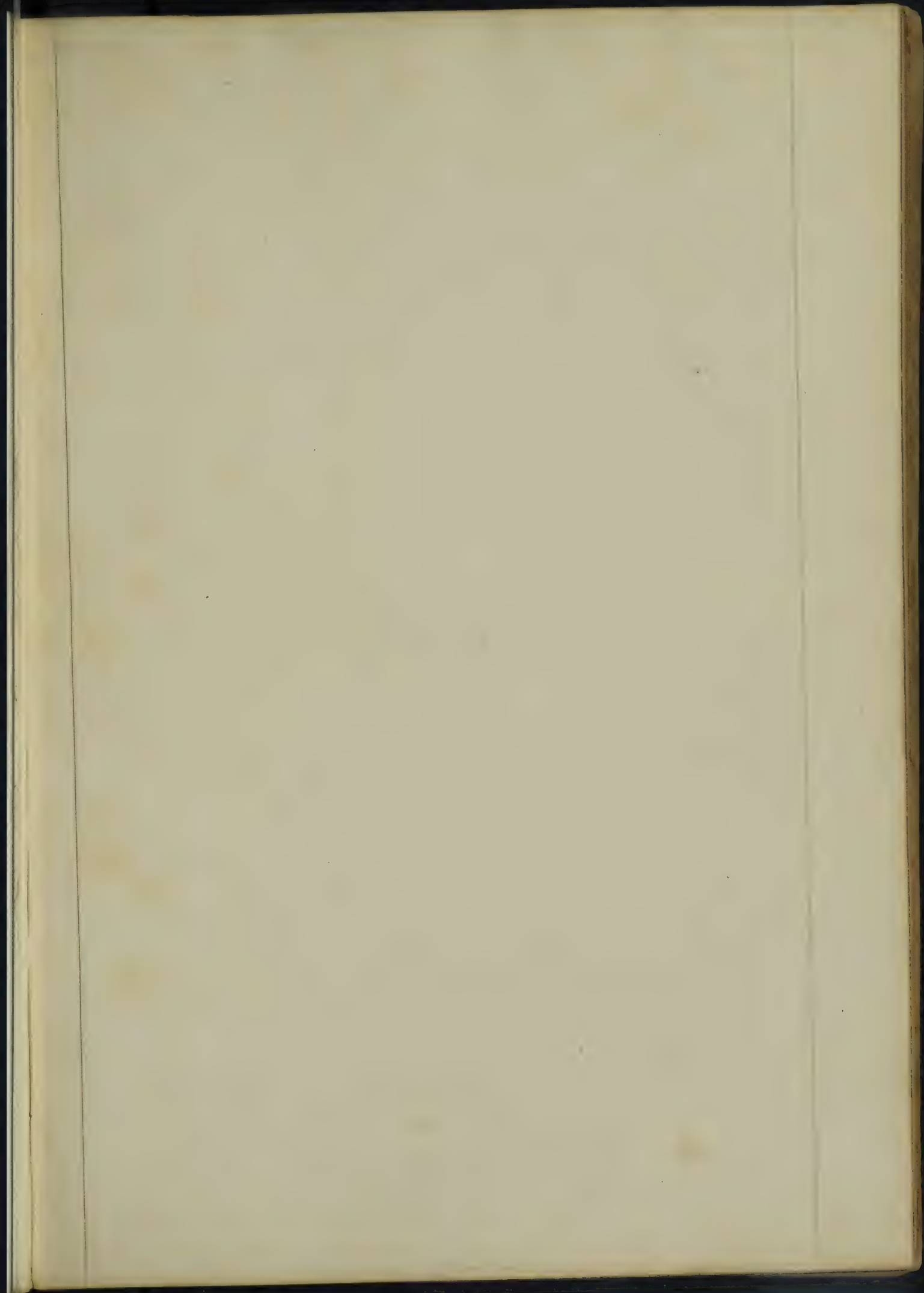


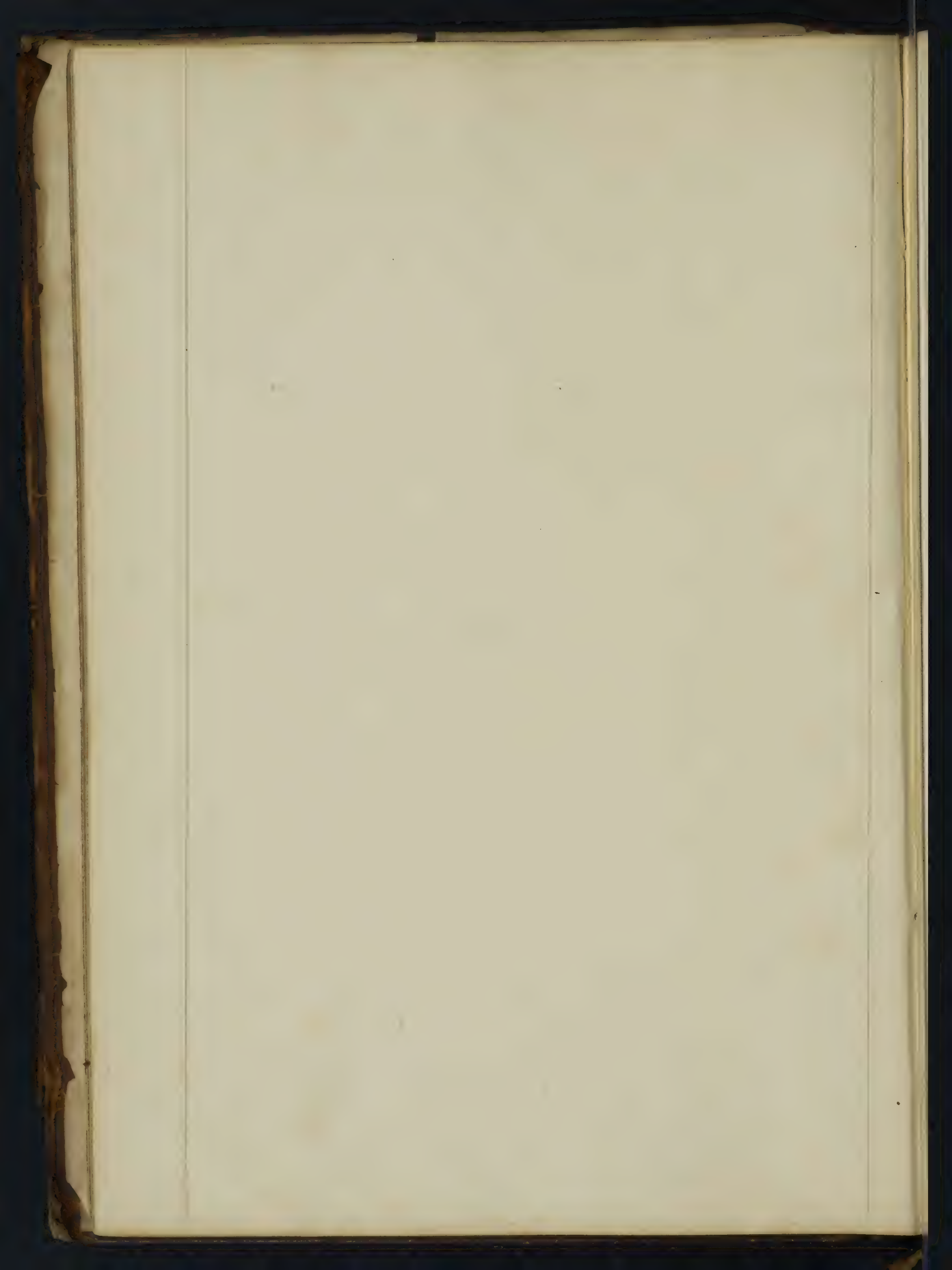


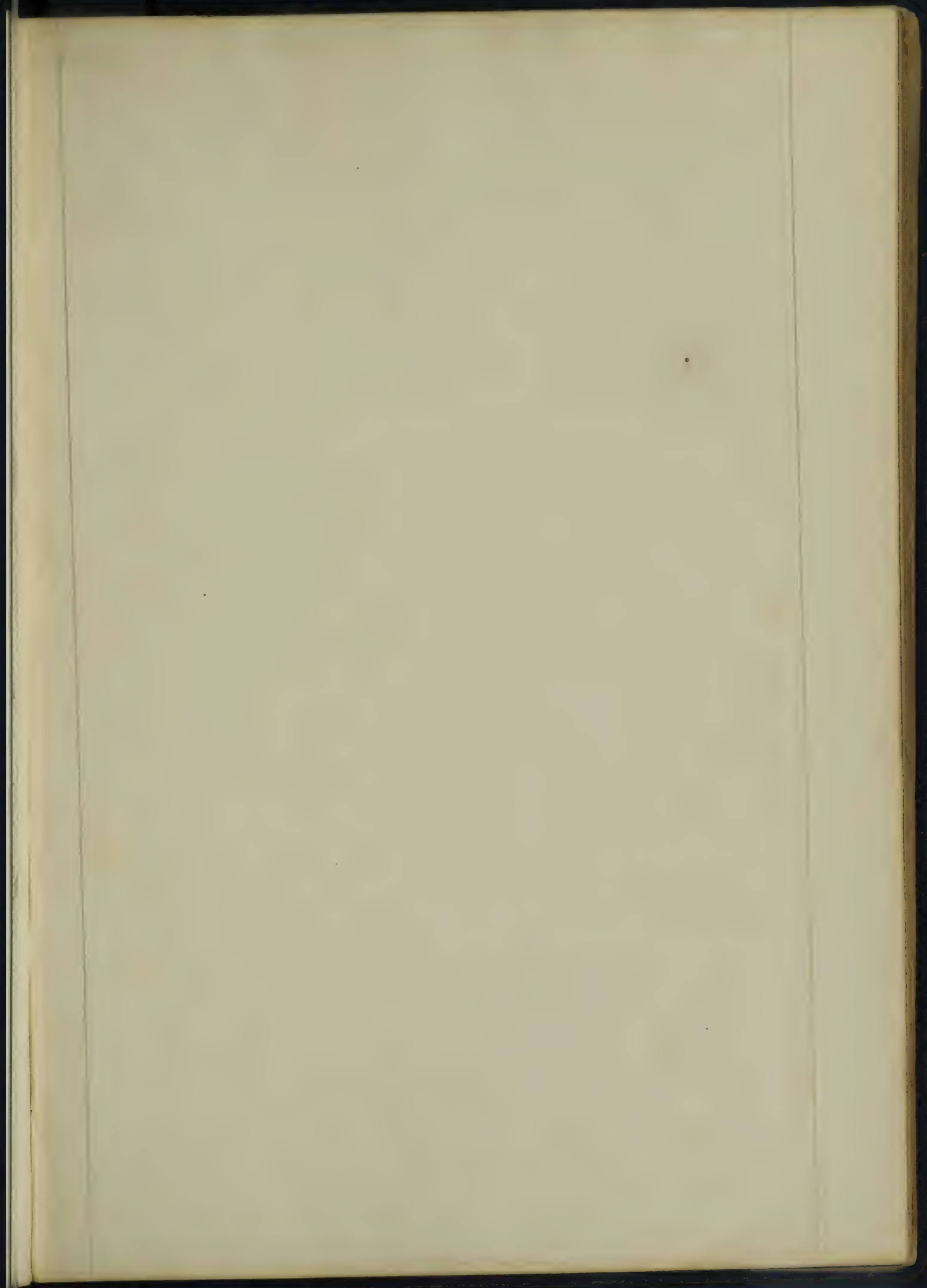


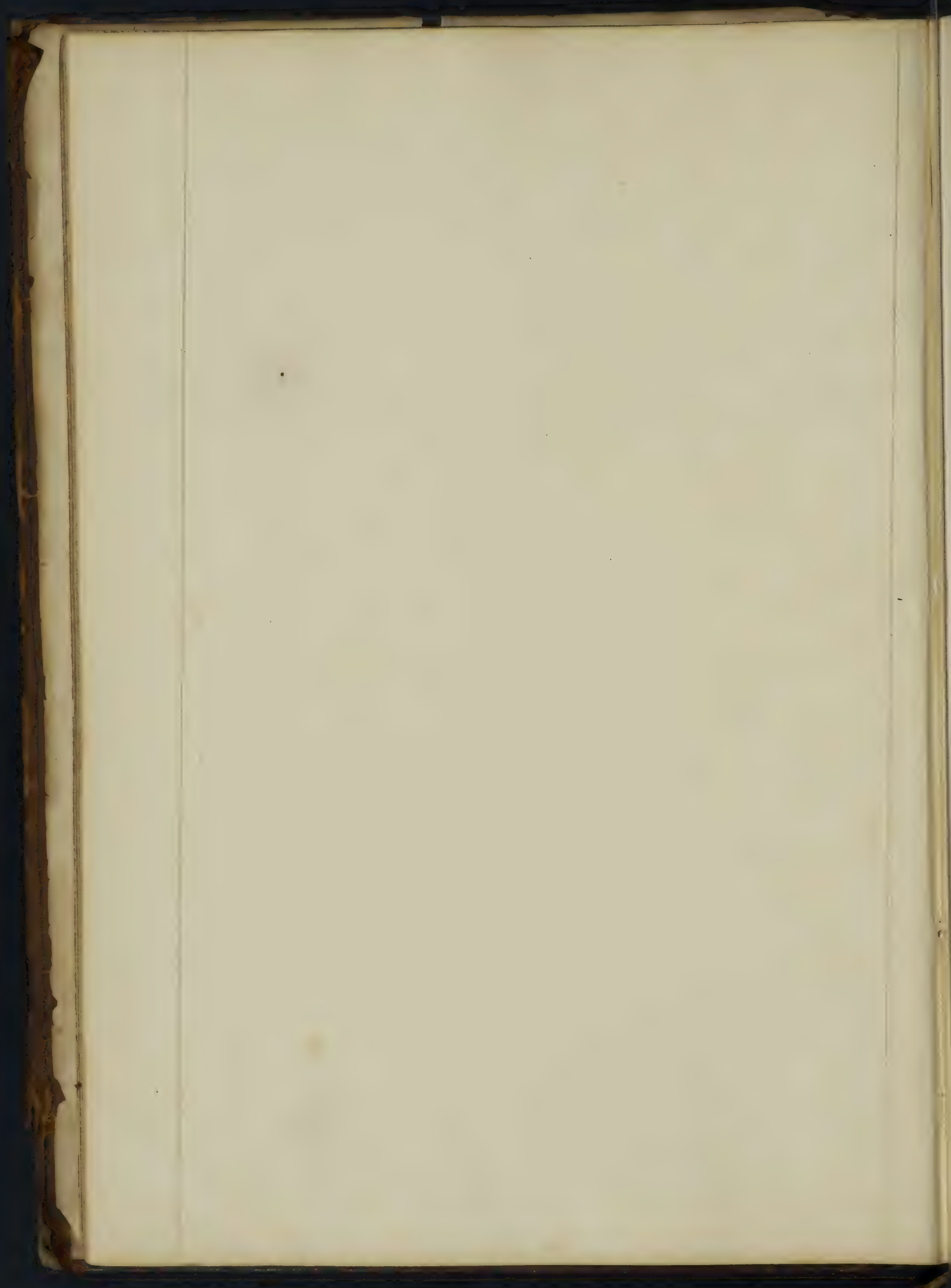


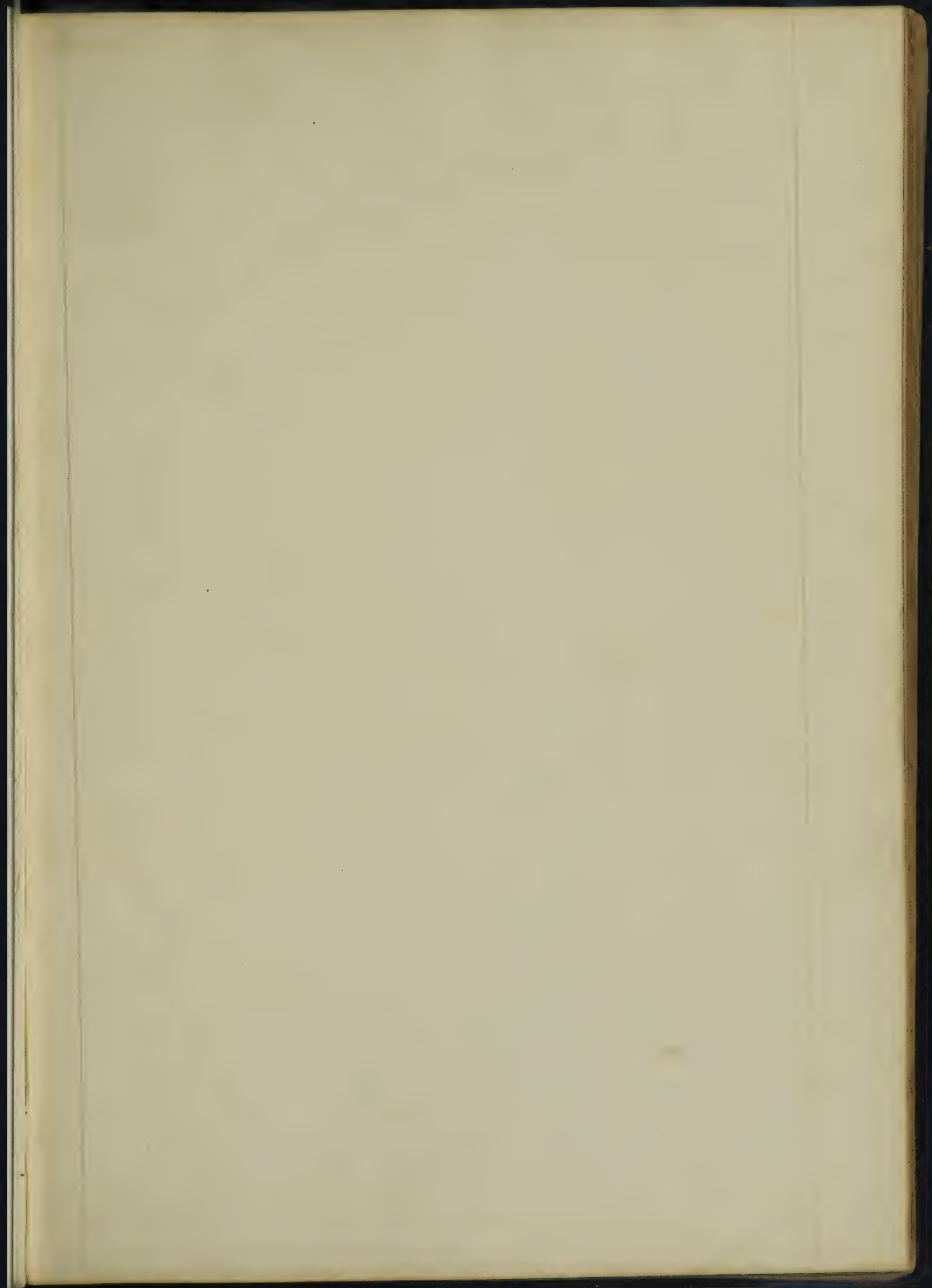


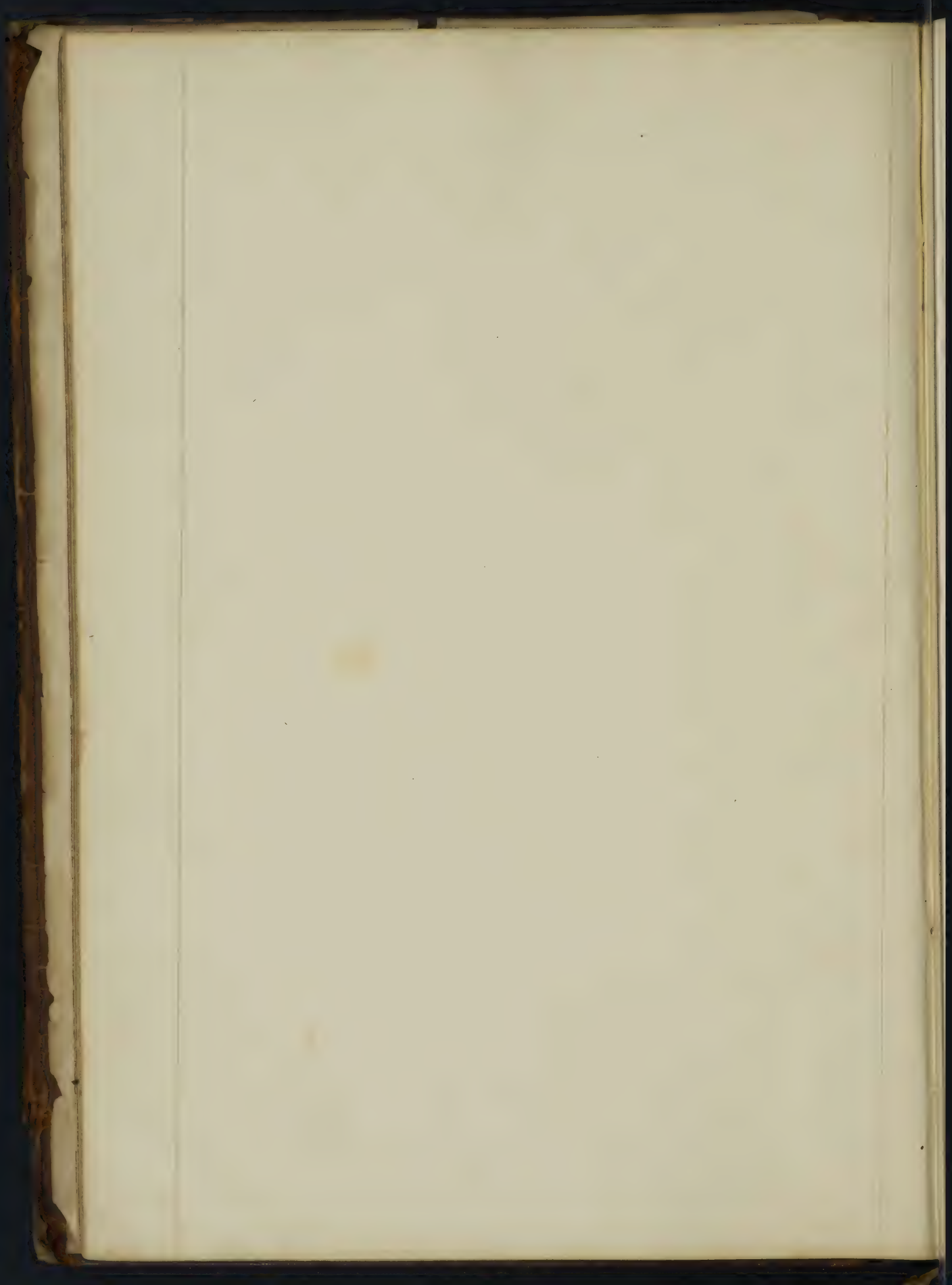


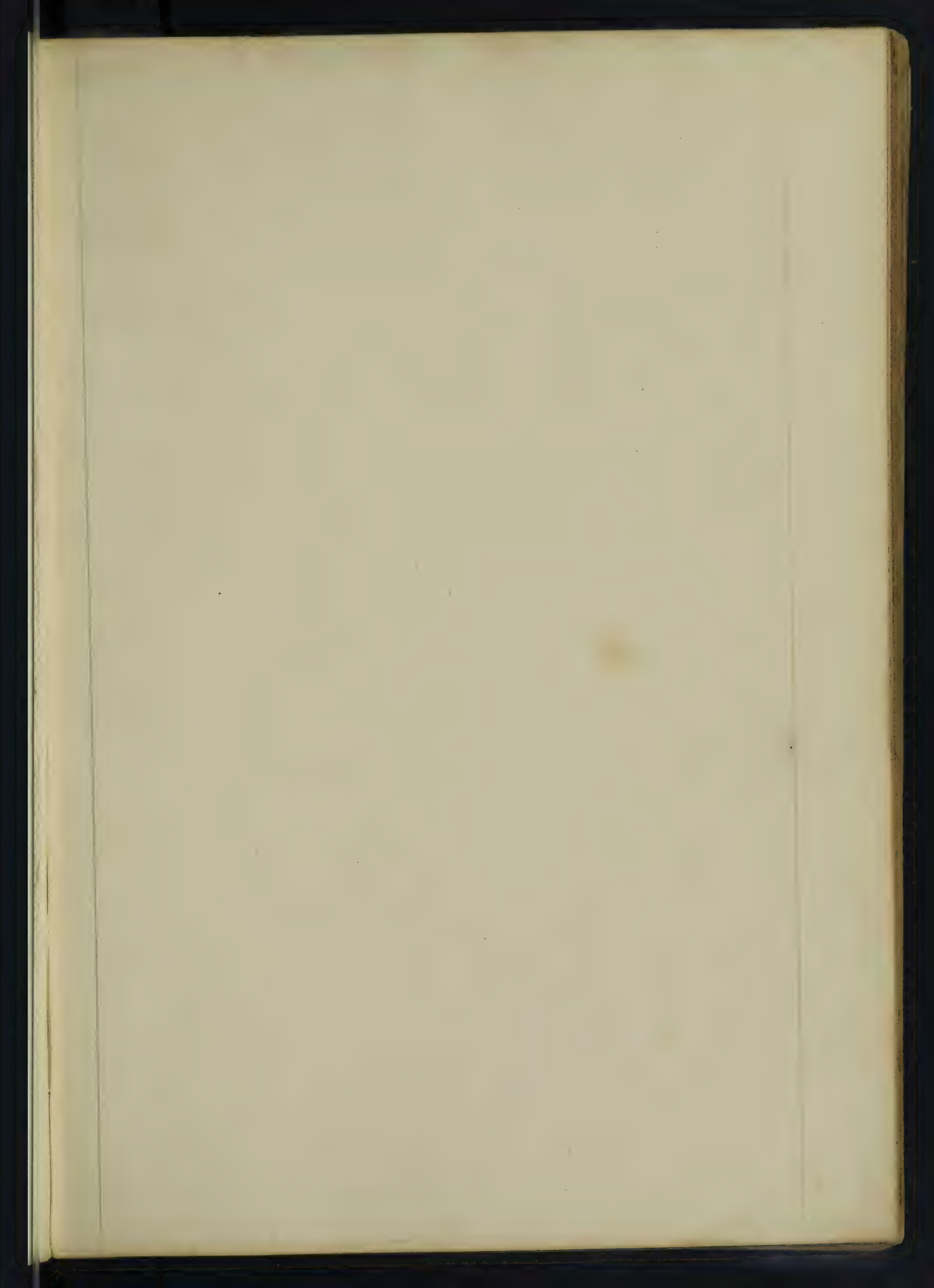


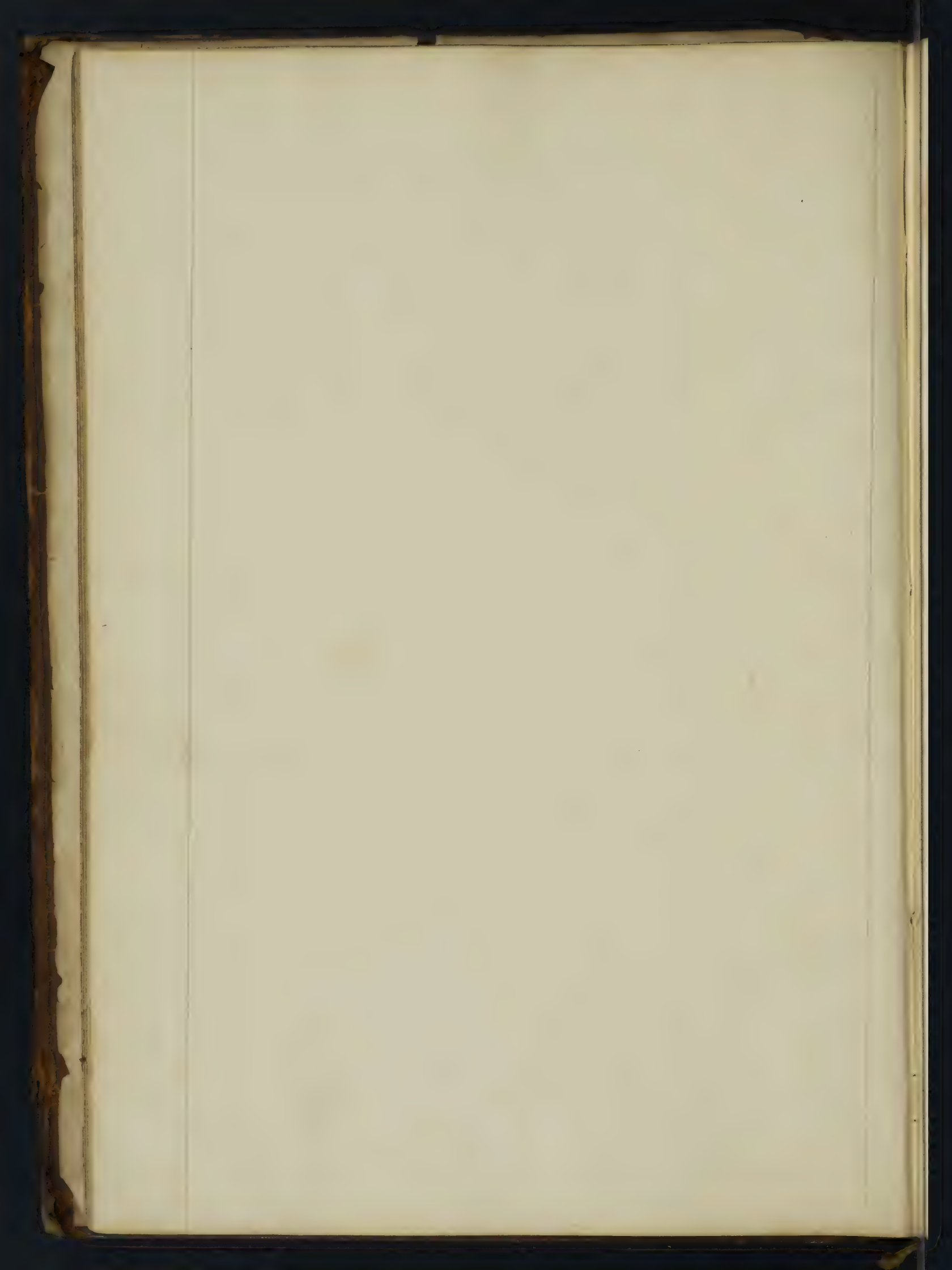


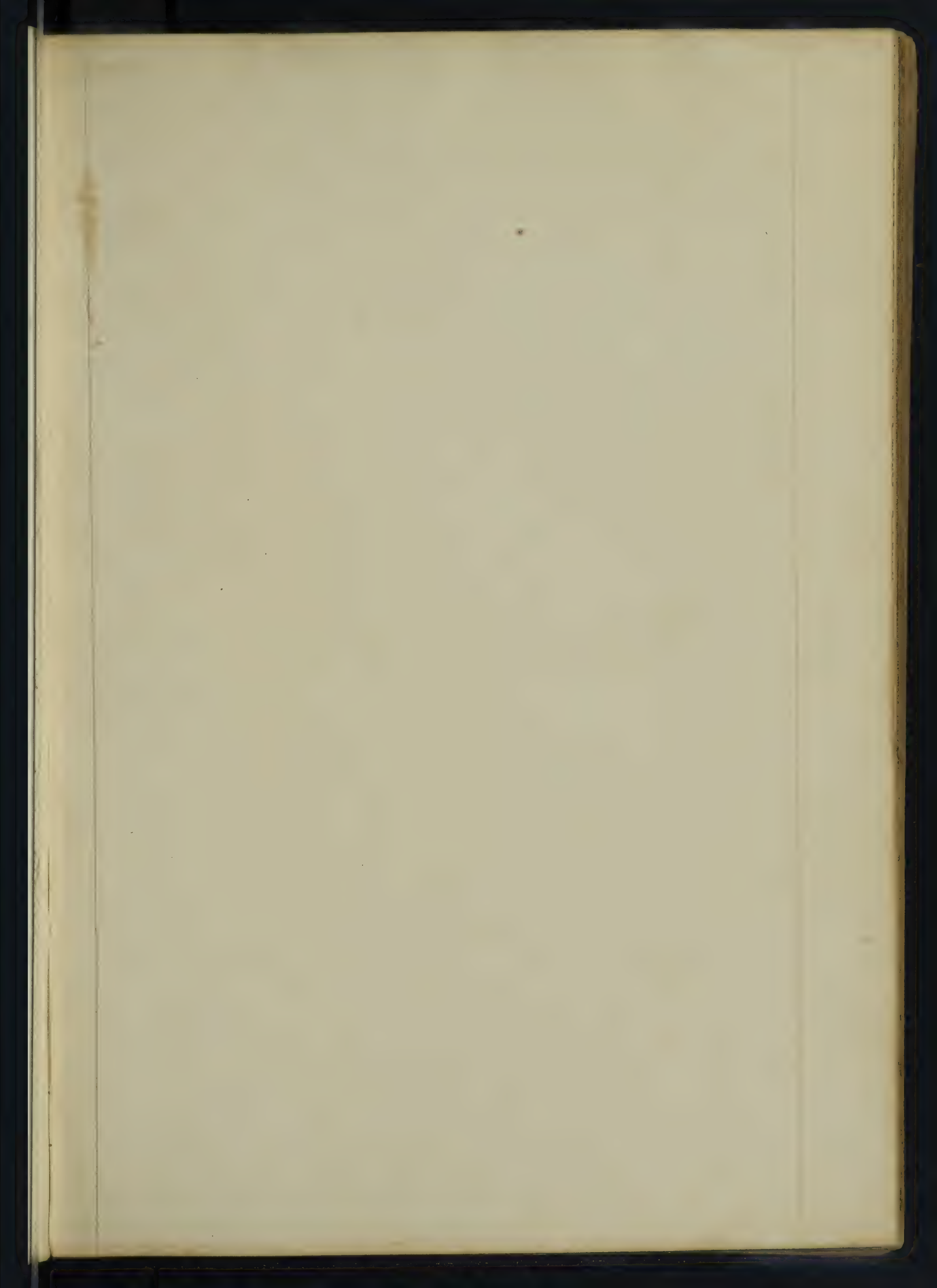


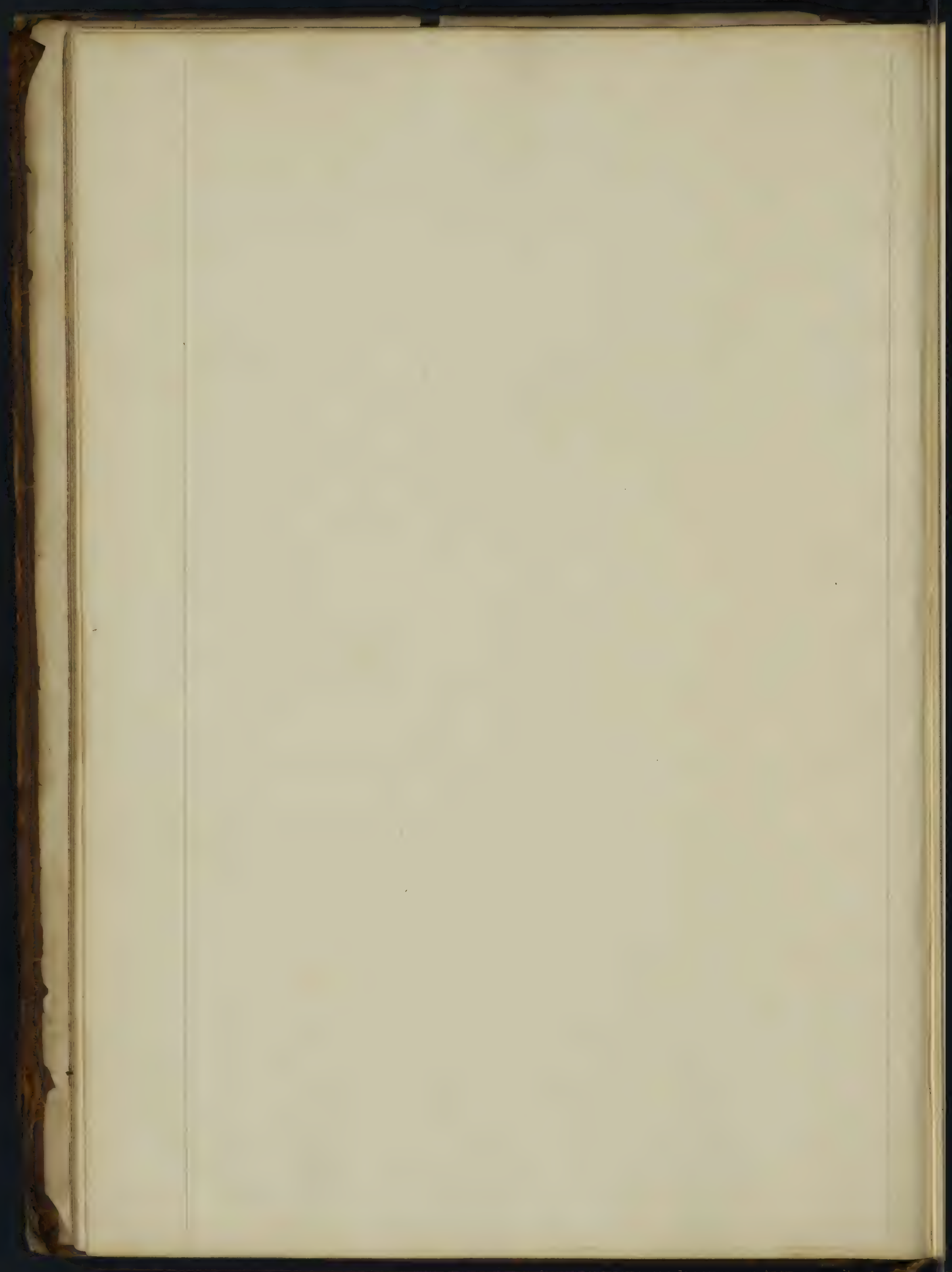


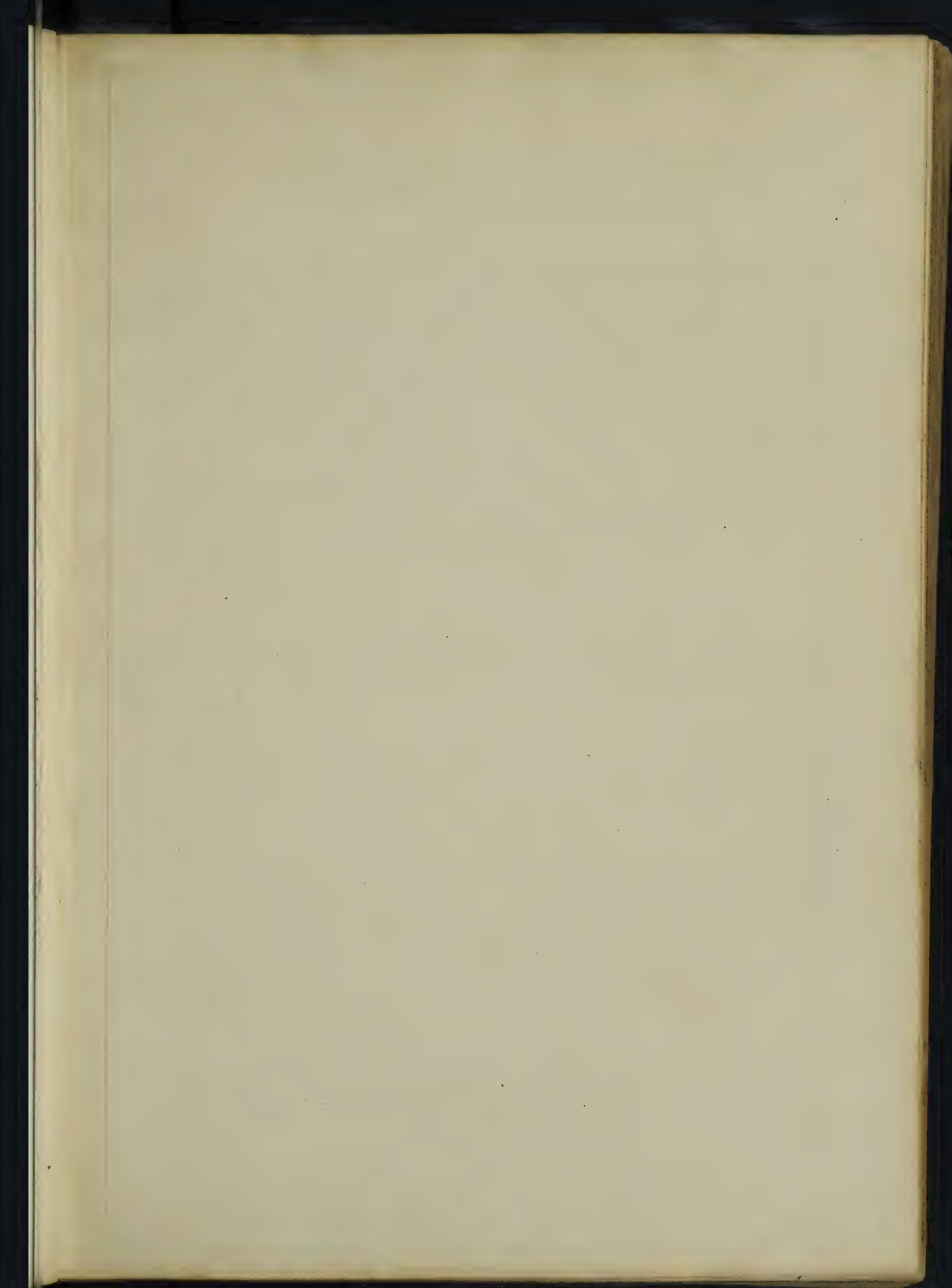


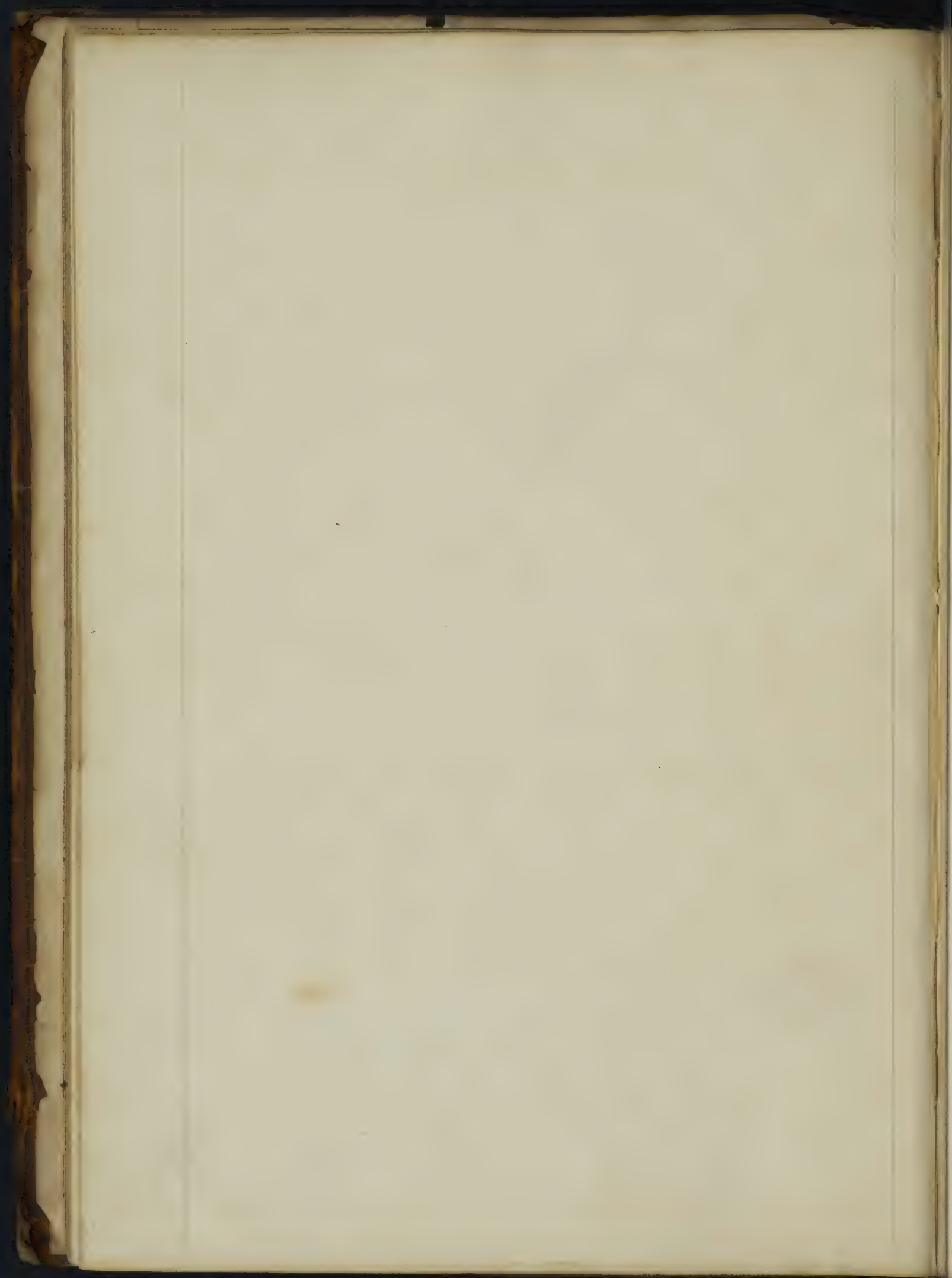












27

Law Merchant
And first of

Bills of Exchange & Promissory Notes.

The Law Merchant has been denominated a (1)
Particular custom 100 75. This is incorrect not
confined to local limits, not necessary to be
specially pleaded L^d Ray 360. Pat 125. and ex-
- cept in new cases where the Law (i.e. the gen'l
usage) is doubtful, not provable by witnesses
nor tried by jury. In such case it is said
evidence of the custom may be received -
2 Burr 1218. 1222. 3 do 1569. 100 2298. 4 DOR 208
dony 72-3. 153. Chit 28. 109 -

By the Law Merchant is meant that cus-
- tomary Law, which governs mercantile trans-
- actions -

Formerly it was confined in its operation to
merchants in the case of Inland Bills of Ex-
- change Chit 13-14. Carth 82. Now confined
to no class of men. governs particular trans-
- actions, among all classes throughout the
realm - Chit 18-19. 300 436. 2 do 459. 461-467.
1 do 75. L^d Ray 175. 2 Vent 295. 310 Comb 45. 152.

It is a branch of Public Law, and a, such
of the gen'l unwritten or common Law.
Marsh. Ins. 18-19. See Insurance.

A Bill of Exchange is an open letter of request (3)
addressed by one person to another desiring

Bills of Exchange &c

him to pay a sum of money to a 3^d person or to any other to whom that person shall order it- to be paid or to the holder i.e. the bearer. 2^o Ray 175. Ch 37. 40. 2 DC 466-7. 3 do 437. Hyd 13. 17. 3.

It may be drawn thus payable to "A or order" (or to the order of A (its)) to "A or bearer", or to "Bearer" generally. Chit 47. 107-8. 17 Cils 190 3 Burr 1517. 1527.

The person who makes the Bill, or draws it is called the Drawer; he to whom it is addressed is called the Drawee, or if he undertakes to pay it- the acceptor. The person to whom it is payable whether specially named or not, the Payee; or if he appoints another to receive the money, he is then the Indorser & the one to whom it is indorsed the Indorsee & any one in the possession of it- the Holder. Hid 4. 2 DC 467. 1 DC 586. 602. Chit 22-3. 13.

It is an assignment to the payee of a debt due from the Drawee to the Drawor in legal presumption Chit 13. It differs from a common draft or order- by being negotiable 1 DC 602. Ch 13.

A negotiable instrument is one in which the Legal as well as the Equitable interest may be assigned to a 3^d person not originally a party to it; i.e. the debt or duty raised by it; is assignable at Law as well as in Equity so that the assignee may maintain an action upon

Bills of Exchange &c

31

it at law in his own name as Assignee or the Drawee, or when the Drawee makes himself the acceptor, assignee or the acceptor in case he refuses to pay the Bill. 2 DE 396. 444. Chit 4. 6. 23. 108. Co Lit-265 a n 2 DE 396. Co Lit 232 R. W. 2 DE 45-6. 1701b 211- 12 DE 26. 14 DE 52. 5 4 DE 341. Ch 7. 8. 7 DE 243 Ch 1. 5. 6. 5 DE 183. 3 do 182 2 DE 1272.

This is opposed to the Rule of the Com. Law in (4) relation to choses in action generally - the general rule being that a chose in action can not be assigned, because it tends to litigation & maintenance 1 Inst-265-n 232. b. 1701b 211. 2 DE 442 Ch 5. 6. 18. 1 DE 26-621.

As when a bond is sold by Obligor - (Chose in action what? vide 2 DE 396-7. 442)

The meaning of the rule is that the Legal Interest in a debt raised or secured by the Instrument - cannot be assigned so that the assignee can maintain no action at Law upon it in his own name. Ex A bond or note payable to A & sold by him to B. It must be sued in A's name (Hence the Obligor at Law may release the Debt after the Assignment & notice of that assignment to the Obligor. 2 DE 442.

Contra John, Cas 411 - Vide 1 John, R 531-3 3 do 435. But the proper course seems to be to set aside the plea 1 Bos & Pal 47. 1 Wheat 233.

Purchasing a chose in action was formerly held to be 'maintenance'. Ch 108. b. 5.

7 M. S. 53. Bosc P. 447. Allengr. 60. 2 Roll 45. b. 2 DC 442. Not to sum. 2 DC 442. Ch. 5. b. 4.

In New-York it has been virtually determined that all choses in action are negotiable but the action must be brought in the assignee

1 Johns Cas 411 - 1 Johns R 531. 3 ds 425.

They are made transmissible by Statute.

Chancery has always protected the assignee of choses in action where the assignment was for a valuable consideration - So that if assignor release after assignment & notice to the debtor - the debtor in Chancery may still be compelled to pay the debt to assignee. 1 Bac 157. 2 DC 442. Ch 43. 3 P W 99. 1 Hyd 411 - 2 Vern 428. 540. 595. 3 Ch R 90. Ch 4. 1 Ves 411 - 12 Chit Cas. 232.

(5). It has been determined in Court that in the last case an action for fraud lies on the original debtor in favor of the Assignee if the former accepted the Release after the notice of the assignment, if the assignor is not able to pay.

I suppose the assignor is able to pay is not the original debtor liable in this case?

1 Rot-108.

In Eng^d. & some of the U. S. the contract of assignment is now good at Law as between the parties to it & is construed into one implied contract or agreement, that the assignee shall have the benefit of the debt & may use the assignor's name to recover it.

Bills of Exchange &c.

35

2 DL 442. Salk 125. Ch 5. 109. 2 Vern 540. 2 P W 658. 1 Mod 113. 1 Powell on Cont. 317.

Such an assignment is a suff^t consideration for a promise by assignee to assignor. Ch 5. Sid 212. 2 DL 820. 1 Rolle 29. Jones 222. 4 M 34 - 590. 8 do 571. 1 M DL 239. 3 Feb 304 -

If then the assignor receives the money or releases the debt. he is liable in covenant broken i.e. when the assignment is by deed In Assumpsit if the assign^t is undated - 2^d Ray 883-88. 124 2 3 Feb 304. Sal 133-125. 1 Pow. Cont. 317. 4 Saund 326. Note. A chose in action may be assigned without a deed sometimes, the action is an action on the case. 4 M 590. 4 Saund 326. was once doubted.

The equitable interest of an assignee of a chose in action has been for several purposes recognized in Courts of Law.

Ex. That is a suff^t consideration for a promise Ch 5. 1 M 619. 21. 4 do 230. Edw 222 7 M 66. 3 B & R 40. (Supra) -

So the Assignor of a bond having become bankrupt a suit may be maintained upon it in his name for the benefit of his assignees - So in an action on a bond given by me to J. S. in trust for A. a debt due from A to me may be set-off.

I think this a great & commendable doctrine - a parture from principle 2 Show 509. 2 Vent 309 Ch 5 Mid 16 - Ch 5 -

and according to modern decisions - in some of the states especially in New-York - choses in action are virtually negotiable - except that the assignee cannot recover upon them at Law in his own name -

The negotiability of foreign bills of Exchange was first recognized in Eng^d in the 14th Century - Show 485. 1 Mod 29. 3 Mod 88. That of inland Bills in the 17th -

The rules that are laid down with regard to Bills of Exchange, will apply with equal force to promissory notes unless particularly excepted.

Consideration -

- (7). Generally in actions upon simple contracts the Plff must prove suff^t consideration
 Ryd on B. 47. 3 Burr 1639. 69. 71 - 1 Pow Con. 330 & onward 752 351 -
 Accur in actions on bond Ch 9 -

But in actions on Bills of Exchange it is generally not necessary for the Plff to prove that he gave a consideration for it - consideration is implied or presumed as in the case of bond, in this respect as affording presumptive evidence of consideration -
 Flyd 48. 2 Ray 758. 3 Salk 70. Ch 9. 57-115 & 18
 185. 2 BE 445. 10 ER 487. 2 M & Selw. 95- or 395.
 In this respect they resemble specialties - If there is a written agreement not constituting

Bills of Exchange &c.

34

a note within the statute of Anne, con- the
words value rec^d - do not imply a consider-
- ation it must be proved - 2 or 3 John, 237-8.
3 Cairns 286. Sav 5. 5 R 532. 7 John 231 - 7 R 351 -

Exception. When the holder claims as Recaver
of a Bill transferable by delivery (not being an
original payee) & under suspicious circum-
- stances - Ex If it had been lost by the Payee
Under such circumstances the Plff may be
required to prove that he or some intermediate
person took it as a bona fide purchaser for
value Ch 9. 51. 201. 209. 3 Burr 5. 16. 23. Bonyon.
15 Mass 433 - 2 Show 235. Peak Ev. 220. 2 Show 2351
2 Show C. 5. 259. 3 Wheat 183 -

When the Holder is named as payee or in-
- dorse the writing imports consideration rec^d -

If in settling an account for goods sold, the (8)
purchaser gives a Bill of Exchange for the
amount; which he fails to pay & an action is
brought on the Bill, he (the Plff) can not-
impeach the account. the bill being evidence
- of the same debt Ch 62. Peak 159. 10 R
445. 1 East 117. 2 R 71. Plt 647 Esp 10240. 2 Cairns 206.
1 Wld 276-7.

And in general Plff is in no case permitted
to prove that he rec^d no consideration for
the Bill, except when the action is brought-
by the person with whom he was immediately
concerned, in the creation or negotiation of

it: as between the drawer & drawer, drawer
& acceptor, drawer & payee -

Q. Whether a want of consideration may
be ever averred, between parties in immediate
privity? 2 Cairns 246. 18 Op 1192. 1 Ch 9. 51. 2
18 Op 2 117-19. 1 DC 445. 1 Mass 27. 2 M 71- Stra 674
Hyd 276-7. Marsh Ins. 543. Action between cur-
= ditor & drawer &c.

When one takes a Bill by transfer or endorses
= must after it is due, in such a case any
party that is sued is in gen'l permitted to
shew, by way of defence that he received no
consideration for it, or any other equitable de-
= fence of which the holder was aware at
the time of the transfer - Ch 52. 113. 1 Hyd 282-4

For a transfer after the bill is due affords
grounds of suspicion & hence it is left to the
jury on the slightest circumstances, to presume
that the transfer was known by holder to be
unfair Ch 113. 3 M 83.

Therefore if notice of non payment has been given
or if it could be proved otherwise, that the
holder knew of its being dishonored, he is con-
= cluded to have taken it on the credit of
the person from whom he received it - & the
above defence will prevail (at supra) 7 M
423. Does not the very fact of its being
over due, create a fair presumption of its
being dishonored or already paid? -

- It has been said indeed that the holder who
received it after it was due is liable of course

Bills of Exchange &c.

43

to all the Equity to which it was liable between the former parties 372 83. 423. 283. 4. Ch 114 372 83. Contra 1701b 230. 2 NR 170. Ch 114 -

Bills of Exchange are divided into 2 General classes Foreign & Inland.

Foreign Bills of Exchange are those which are drawn in one country or sovereign state & payable in another. Kid 10. 2 Plow 485. 3 Mod 88. Hard 483. Ch. 12. 14.

Inland are those payable in the country where they are drawn Kyd 10. Resolved in Lamsdale vs Brown - Cir. Ct of U.S. 1821 Pennsylvania District, that a Bill drawn in one of the U.S upon a person in another is a foreign Bill (Washington J) contra 5 Johns 375. So decided by Sup Ct U.S. 1829.

Bankers checks or drafts on Banks are in form like Inland Bills of Exchange, but they are generally made payable to Bearer and are substantially Bills of Exchange Ch 16-17. 109-171- 372 423. Not universally so payable in this country. 3 Johns Cas 5.

They are now negotiable like Bills of Exchange formerly they could not be Ch 16. 176 3 Burr 1517 Hence such a check or draft may be counted upon as a bill of Exchange - so nomine.

(10)

Bills of Exchange &c

But they are not payable until demand is made, in which they differ from Bills of Exchange which are payable at a particular time - Ch 16. 17. 44. 5. 7 Jd 123. i.e. They are payable at no appointed time as the latter are. but when demanded.

They may be declared on as Bills of Exchange, tho' said not to be protestable Ch 16. 17. Jd 423 L^d R 744. Song 635.

If not demanded within a reasonable time & the broker fails, the Bank or Drawer, the Holder must bear the loss 7 Jd 423. Ch 16. 44. 5 Ryd 41. 2. 1 Bl R 1. 1 L^d Ray 744. 3 Johns C 5.

What a reasonable time is, was formerly a fact for the Jury to decide. It is now established (the facts being given) to be a question of Law for the Court to determine. Ryd 41. 2. 1 Bl R 1 1 Str 550. 415. 910. 2 do 1248. 1175. Beavers Lex Mercat. = torius 482.

Whether the time in any given case has been reasonable is a mixed question until the facts are ascertained. - Ex Suppose the broker lives not in the same town with the holder the jury will ascertain the distance & the judge will make up his mind as to the reasonableness of the notice.

Bills of Exchange or

47

Parties.

(11)

It was formerly held that none except a merchant or one in trade, could be a party to a Bill of Exchange Law 891-1585 - indeed by Stat 21 Hen VIII. all chymen were expressly prohibited.

It has however been long settled that all persons having understanding & Legal capacity to contract may be parties to such a Bill -
Sal 125. 12 Mod 36. 380. 2 Vent 292. Comb 152. 12 Shw 125. Carth 282.

Corporations may by their agents be parties to a Bill tho' in Eng? certain restraints are imposed on them by Stat. 6 Ann & 15 Geo. II. 12 Mod 30. 38. Sal 125. Ch. 19. 1 Atk 181-2. 2 Burr 1216. As to infants & females covert see "Husb & Wife". "Parent & Child" Ch - 20-1 - Carth 160. 1 Roll 729. 1 Leon 86.

The Original parties to a Bill are generally Three (Kyd says 4) Drawer, Drawee, & Payee Tho by endorsements & transfers any number may become parties Ch 22. Kyd 23. It is not necessary that there be Three - frequently but two Parties - Ex. One draws a Bill on another payable to his own Order, or on himself payable to another's Order - Ch. 48. 22. Kyd 3. 1 Sal 130. 6 Mod 29.

And indeed there may be but one party to a Bill that is valid - Ex. A draws a Bill on himself payable to his own order, he

(13)

Bills of Exchange &c

then stands in three different capacities
Ch 22. Carth 50. 9. 1 ~~Shaw~~. 103. 2 Burr 1077. Fortesque
281. Sal 100. Mod 29.

This however is in the nature of a Promissory note
when it is endorsed by himself to a 3^d person it
then becomes operative, till he has negotiated it-
he is ~~un~~ wholly unaffected by it. It is de-
clared upon as a Bill of Exchange Ch. 22.

Is it necessary that such a Bill should be ac-
cepted. J. G. thinks not.

But further. A person not originally a party
to a Bill may become such by the negotiation
of it & still further He may become such
by accepting or paying it for the honor of
the Drawer or any indorser Ch 23. 103. 186
Hyd 153. 156. Carth 129. Latw 896. 899. Osceles 33. 34.
436.

Thus if the Drawee refuses to accept any one may
after Protest accept for the Honor of the Drawer
This is called "acceptance *supra* protest" as
to his rights & duties see post.

14). So on refusal of payment by acceptor or
stranger may make himself a party by
paying the bill for the honor of the drawer
or indorser, this is called payment *supra*
protest. vide post Ch 23. 115. 1 Esp 112. Osceles
159.

A person may become Drawer, indorser or

Bills of Exchange &c

51

acceptor not only by his own immediate act but by that of his Agent or Partner. The rule would be correct without the word Partner, for he then acts as an Agent.

1 Ch 23. 9 Co 75-b. 2^o Ray 930. 6 Mod 36. 12 do 346. 564-

In such cases he is said to draw by procuration - Ch 24. Beawes pt 8.

The act of the agent being merely nominal, infants, fumes courts, out-laws &c who are incapable of acting for themselves may be agents for this purpose Ch 24. Co Lit 52a. See Husband & Wife. Parent & Child - (or ministerial).

Authority by Procuration.

An agent may be authorized for this purpose by power of Atty. or by parol. For a Bill of Exchange is not a deed, and an authority in one person to bind another by simple contract or Parol may be conferred by Parol. But no person can make a deed, as Agent, without a power of appointment by deed - Ch. 24-5-6 12 Mod 564. 7 Mod 757. Esp 111 - Beawes 86-

A gen'l agent, that is, one acting under general authority may bind his principal to any extent - But a special agent is one with special or limited authority - can bind his principal only to the extent to which his authority goes - 2 H Bl 618. 1 do 155. 6 Mod 591-

Bills of Exchange &c

A person signing his name to a blank paper & delivering it to another, authorises the latter to fill it up with a bill of Exchange or note for any sum.* In Eng? for any sum the stamp will warrant. Otherwise of Bonds. See Tit. by Deed" Ch 25. 56. Bony 496. or 514. 1 H DE 315. Tryd 110. Peck 42. L^d Ray 930. Comb 16-17. Shep 54. Peck § 118. 4 Cruise 26.

As to authority implied & authority by assent subsequently given. See Master & Serv^t. Ch 26. L^d Ray 930. Comb 450. 5 M 757. 2 Hen DE 618. (16.)

* & to any person whatever. The principle of the C. L. is when one of two innocent persons must suffer by the act of a third, he of the 2, who enabled the 3^d. to commit the fraud must suffer the loss.

An agent cannot delegate his authority unless expressly authorised so to do. 9 Co 75. 1 Roll 330 - Ch. 27. 29. 95. 96.

In drawing, indorsing or accepting, for a principal the agent must do the act in the name of the principal - otherwise the agent is bound & not the principal. Tryd 86. Com 10 Atty C 14. Stra 705. 958. 6 M 176. 1 M 181. Hard 35. Deaver pl 83-6. 9 Co 75.

The usual form is "A B by C D his Attorney" or "C D as Attorney to A B."

The incapacity of the Drawer of a Bill will not discharge a subsequent endorser from

Bills of Exchange or

357

a suit commenced by the Holder - It is binding upon all parties except those who are legally incapable - For the indorsement in legal effect creates a new bill - *Stea* 703. 958. *W.R.* 171 - 2 *Atk* Ch 21.

Binding power of Parties -

One of two joint-traders may be acceptor in the name of both, or of the firm & may bind the firm if the Bill concerns their trade, i.e. the trade of the company.

Ch 27. 8. 112. 260. *L^d Ray* 175. 1485. *Sal* 292. 125. 752 207 12 *Mod* 354. 2 *Vern* 277. *Peak* 12 16. 1 *Cowp* 403. So if the bill drawn by the firm is accepted by one only not in the name of both, but in his own sole name, or in the others only. 1 *Cowp* 381. *pr L^d Abbott*. 2 *Cowp* 305. 15 *East* 11. 12.

It is said however that the act of one in the name of the firm, if it concerns his separate interest only will not bind the firm. *Sal* 125 Ch 28. *Peak* 16 80. *Vide* 2 *Vern* 277. 292. *Est* 522. It seems now that the act of one in the name of the firm, tho' for his own benefit will bind the firm, if the holder of the Bill did not know that it was for the separate benefit of the Drawer.

It has been holden that two persons by making a Bill payable to their order make themselves parties to that transaction so that one may indorse for both. *L^d Mansfield* in such a case admitted the evidence of Merchants that the indorsement was invalid, because not indorsed

by both - But in that case the indorsement was in the name of both. Ch 29. 30. Long 653. 5210. Watson on B. 253-7.

L^d Mansfield afterwards considering himself in the wrong revised the rule, which now stands as above that it does carry the whole interest - i.e. the endorsement by one -

(8)

If a bill is drawn on a corporation & accepted by one of their body, it does not bind the corporation, not being their act - Ch. 29. 30. Long 653. See if accepted by its authorised agent or officer.

When one partner draws for himself & partner, he should do it in the name of the firm, otherwise it is doubtful whether the other would be bound (ut supra) Peck 126. L^d Ray 175. 1484. Ch 30. 56. 75. Sal 126. Long 653. The firm could not be liable on the bill tho' it might be on the consideration. 3 Comp 308. 13 East 11. 12. It is a gen'l rule that where of two innocent persons, one must suffer, he will be the sufferer who was the cause of it.

(19.)

Form & Requisites of a Bill

No particular form or set of words are necessary to the creation of a Bill of Exchange. Ch 21. 58. 10 Mod 287. 3 do 374. 3 Toils 25. L^d Ray 396. Stra 629. Esp 124. Hyd 61. 601. Com. Dig. B. 12.

Ex. I promise to account with A or his order for £50. this is considered as a promise to pay it & is a good bill & the rule is the same with regard to promissory notes.

Bills of Exchange &c.

28

But it must possess certain essential qualifications without which it will not operate as an instrument, but as mere evidence of past contract, is without these requisites it will not carry with it internal evidence of a consideration - not negotiable is it will not be a Bill of Exchange. Ch. 32. 173. 184. 5 TR 485. 2 BLR 1072. 3 Wils 213. 2 East 360. 2 Ray 1545.

The Requisites are

(20)

- 1st That the Instrument be payable at all events & not upon contingency.
 - 2^d That it be for Money only, & not for collateral articles, or for the payment of money, & not for the performance of any other act.
- Ch 33. Ryd 50. 3 Wils 12. 13. 213. 2 BLR 1071 - 5 TR 485
7 do 242. 2 Ray 1362. Comb 227. Stra 115: 1271 -

So if payable out of a particular fund, which may not be productive, it is not negotiable, nor can it be so. Ch 33. 5 TR 482. 4 do 242 - 2 Ray 1632. 1563 -

It must import a personal credit to the drawee (21) - or (Stra 1151) Comb 227. 1 Mod 242. 8 do 265. 10 do 294. 1 Ryd 51-2) Not to a fund. It seems however that such an instrument is considered & may be declared on as a Bill of Exchange between the original parties to the instrument & as between the drawer & payee Ch 32-3. 7 TR 243. 5 do 485. Ryd 1. 8. 2 BLR 1072 Contra - That Bill between the parties is nothing more than evidence of a contract. 6 TR 123.

Bills of Exchange &c.

3 Wils 211 - 2 BL 2072.

But the rule seems now to be settled.
Ch 48. 1 M 123. 7 M 423. Kyd 65. Petw 18.

There is an exception to the genl rule when the event is certain, morally so or of notoriety or respects trade it may be good, tho' payable out of a particular fund. Ex. Payable after such a ship is paid off - or on the resp.ⁿ of pay or wages from a certain ship Ch. 33. Stm 24. Wils 262. Kyd 57. Bun 272.

And if the event on which it is made payable is one which must inevitably happen at some future period the bill (being for money only) will be a good one. Ex payable one month after the event, as death. or when an infant shall attain full age specifying the time when. Ch 33-4. St 1217. Bun 226. Kyd 97. For it is payable on the day when he would attain full age if alive.

22) The mention of a particular fund only by way of direction to the drawee how to reimburse himself will not destroy or vitiate a bill. Ex \$100. or my half pay to be due on such a day in advance. Ch 34. St 764 - 2 Ray 1481. 1 Leonard 12. It imports a personal credit to drawer Hony 571. Kyd 54. For it is payable at all events.

63

Bills of Exchange or

So if words inserted for the purpose of pointing out the consideration of acceptance - Ex value rec^d. out of my store or estate in A. or being a portion of a value deposited as security for the payment hereof. 1 Ch 34. L^d Ray 1545. 7 M 733. Sel Ca 29. Reason *supra*.

2^o. For the payment of money only, Hence an order payable in goods is no bill of Exchange Ch 34. Hyd 50. Reason. These Instruments were devised for the purpose of facilitating unit^{ies} - tances not as medium of barter. Hyd 50. Besides if orders for goods were negotiable they would even perplex commerce by means of: - forced of oppressing the parties bound - Ex. By transferring to a distant indorsee -

Not only must be payable in money, but in (23) money only. for same reasons. Hence instr^uments for money & goods - or for money & some act to be done is no bill of exchange Ch 35. Hyd 50. M 127.

But any order which cannot in any part be complied with, but by payment of money is for money only. Hyd 50. 10 Mod 287.

Ruled in Sup. C^t. Fairfield Count. Dec 1818. That a Bill payable to order at N Y in cur^{re} - rent bank bills of N Y. is a good bill of Exchange - p. 45.

Bills of Exchange &c

It is not to be concluded that these instruments (when deficient in any of the foregoing requisites, are of no force - They are not bills of exchange - But may be used as evidence of contract between the original parties - Ex. If the contingency has happened - If the fund out of which it has been productive (p 20) Ryd 58. 2 BLR 1072. See Ryd 15. p 21. that they may be declared upon as bills between the original parties.

(24) The addition of any thing merely cautionary will not vitiate a bill. Ex. mentioning a reason for drawing it Ryd 61. Stra 706.

In case of foreign Bills, it is usual to make three of the same tenor that if one is lost the money may be received on the other ch 45.

But in such a case to prevent the same from being paid more than once, each part should refer to the others, & be payable on condition that neither of the others has been paid ch 46. Bayly 15.

The bill should specify to whom it is to be paid as to A or to the Bearer (Chit 46) But it is said if the bill does not designate any payee by name, but mentions of whom the value is rec^d. it is to be considered as a bill payable to him. Chit 46. 1 XBL 108. Doth pl 30.

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Bills of Exchange &c

67

As to Bills payable to fictitious payee or order (25)
it now seems settled that such a Bill is in
legal effect, payable to Bearer, as vs such par-
ties as knew the Payee to be fictitious, but vs
no others. p 66. 70. 101. 108. Ch 47-8. 59. H. 109. 202
37R 174. 182. 481. 174 DL 313. 386. 569. 2 do 194. 288.
Hya 208. & ult. as a bill payable to order it
cannot operate.

Such bills have been highly censured & it is
said the person endorsing the fictitious name
would be guilty of forgery. Ch 48. Authorities, Supra
Hya 219. 227.

A Bill payable to one for the use of another
is valid. p 6. 18. Ch 48. 112. Carth 57. 2 Bent 357.
Hins 264. 67R 123. Hya 168. 174 DL 313.

A Bill to be negotiable must contain operative words
of transfer. As to A or order, to the order of A.
to A or his assignees. to A or Bearer. to bearer
or to the Bearer own order p 3. 66. Ch 48. 108
Beaves p 3. 3 Wils 211 - Hya 36. 63-5. 2 Stra 1212 -
2 Wils 353. Hya 108.

A Bill payable to the order of A has the same
operation as one payable to A or order. p 102
Hya 108. Carth 403. Ch 15. 134. 187. 2 Show 8. 5 East
476. 4 Com R 246.

Now settled that the words "value rec^d" are (26)
not-necessary in a bill or endorsement. A

valuable consideration is presumed. p. 7. Ch 50.
 2 Show 496. Bayl 1312. L^d Ray 1481. 8 Mod 267. 1 do
 310. 1 Burr 88. 3 Toib 212. Hyd 61-2. Stra 1212. Skin
 346. 12 Mod 345.

But to entitle the Holder to an interest & damages vs drawer or endorser, in default of acceptance or payment these words are necessary. by Stats 9 & 10 W^m III. & 30 & 4 Anne Ch 50. Hyd 71. Ch 93-4. Stra 910. p 56.

If the bill is for accommodation only & that fact is known to indorser he can recover no more than he paid for it - the less than the amount of the bill Ch 51. 1 Esp 261. ^{Peak} Post 61. 216. 2 Caines 248. Ex. Acceptances for the accommodation of drawer.

But when Bill is drawn for money actually due from drawee to drawer, or in the regular course of business the indorser tho' he has not given the full amount may recover the whole. & Chitty says hold the overplus above the sum paid (as the case may be) for the use of the indorser. Ch 52. 1 East 1261. It is then the assignment of a debt due from the drawee to drawer p 3.

27). In all cases in which the Deft may aver the want of consideration he may aver that it was illegal (Ch 52. 10 R 2 445) and also in many other cases. As between the parties

Bills of Exchange or

71

who are immediately concerned in the illegal transaction - the illegality of the transaction considered is a good defence Ex. Drawn & Payee - Ryd 280. Dory 614. or 636.

And a 3^d person knowing the consideration to have been illegal at the time of taking it, cannot recover upon it - Ch 52. 18cp 166. 6M 41 - 18cp 6.

It has been holden however that a 3^d person who having put his name on the bill, at the request of the Holder has been compelled to pay it to a bona fide purchaser, may recover upon it, tho' he knew the consideration to be illegal - Ch 52. 59. Peak 215.

A volunteer only not a party in interest.

And in favor of any Holder of a bill upon a (28) fair consideration & having no knowledge of the illegality of the original consideration may recover upon it - Ex A Bill given for smuggling goods - Ch 59. Sel ca 71. Ryd 280. Dory 614. or 636. Tho' as between the original parties it is void Ryd 277. 280. 283. Dory 614 or 636. 17R 308. 8 do 390. 7 do 607. 3 do 454. 537. 80-3. Stra 1155. 10L 445. These parties being in pari delicto Exception - where it is endorsed after it is due holder liable to same equity as in = - order Sent p 8. 9. Ryd 283-4.

Exception also in cases in which the Statute law has declared a bill to be void, for the

Bills of Exchange &c.

protection of one of the parties, no holder can recover of him. Ed. When the consideration is usurious - money won at gaming - For signing bankrupt's certificate Here the innocent indorser can not recover of the drawer or acceptor. They are not parties criminals, but intended to be protected by Statute Ch 53. Doug 646. or 670. 2 H Bl 47. Ala 1155. Carth 356. 1 East 92. Doug 708. 1 East 274. The ground of the distinction is merely that if the drawer &c were liable the mischief intended to be prevented would be let in, in the latter case & not in the former.

But in such a case the indorser is liable to the indorsee without notice says Phill 2d. Would notice make any difference as to the indorser? Ala 1155. Doug 713. 716. New contract the mischief not let in "Usury" - 2 Phill Ev. 22. 6 Cranch 224. Salk 334. or 344. 5 Mod 175. 9 Mass 1. As if the maker's name were forged 2 Phill ev. 22. 3 Day 12.

Chitty says that the innocent holder can recover only of the person of whom he immediately received it. Ch 53. 2d. Why not? [Ch 4 must suppose no action will lie on the indorsement but that the action must be on the consideration of the indorsement. Is not this correct? - As there is in fact no bill indorsed. But contra. may not the indorsement be declared on as a bill? -

Bills of Exchange &c.

75

its creation is indorsed upon usurious com-
- munication & then passed to a bona fide
purchaser, without notice he may recover of
the drawer or acceptor tho' not vs the in-
- dorse ("idemy") Ord 103 a. / East 92. Ch 53-4.
1828 273. Doug 126. / Sand 294 & n 1. 8 M 390.

The Usurious Indorsee cannot recover at all
2 Cudde. R 175.

Bills are sometimes made payable "as per
advice". Ch 37. Ante 20. In such case, the
Drawee is not to pay till further advice rec^d.
Ch 55. Pothier pl 36. 169. Is this consistent with
the rule that it must be payable at all
events? Is such a bill negotiable before advice
to pay it? Seems if payable without further
advice or if both clauses are omitted. Ch 55.
(The rule must mean that the advice must at all events
be given & not be left contingent).

The Drawer's name must be subscribed or
inserted in the body of the Instrument -
Ch 55-b. Beave, pl 3. 2nd Ray 1376. 1542. The 399
509. 8 M 307. post 107.

And it must be written either by the person
purporting to be the Drawer or by some
person authorised by him. Ch 56. P. 14. B.

Construction.

Bills of Exchange like every
other Mercantile Instrument are to be
liberally construed - more so than Bonds.

Bills of Exchange &c

And in a case where A acknowledged in writing that he borrowed & rec^d. money & gave a note containing these words. which I promise never to pay. it was nevertheless held that it was a promise to pay.
2 Atk 32. Clit 58.

It is on this principle of liberal construction also, that a bill payable to a fictitious person, or order, operates as payable to bearer.

Generally the contract is construed according to the Law of the country ("Lex loci contractus") where made Ch 59. 60. 18. 83. Et. of accept^r - tance at Leghorn p 47. (This example I trust is not Law. It has been denied 2 East 453. vide 4 Wheat-122) 2 Str 733. - Sed Ca 144 - 1000r 141. 2 Old P^r 447. 2 H Bl 603. Corp 174. Barn 1077. 1 H Bl 126. 7 H 242. Skin 272.

Exception as to time of payment. that is generally calculated according to the Law of the country where payable. "Lex fori" p 85. Ch. 59. Bowers pl 251. Ryd 8. Pothier pl 155.

Reason of the distinction: The nature & extent of the contract or agreement, are to be determined according to the acceptation of the words where it is made.

The time & manner of performance according to the meaning of the language where the performance is to be.

Bills of Exchange &c

79

As to the remedy - the form & extent of it is (31)
regulated by the law of the country in which
it is sought - the *lex fori* - "Assumpsit".

So that the nature construction & legal effect
are regulated by the *lex loci contractus*; the
mode of enforcing the right (i.e. the process
the form of the action & the mode of plead-
ing - of practice - by the law of the state in
which the remedy is sought. Ord 31-2 in
Pres in Ch? 207. 1020 P.C 38. Lofft-138. 154. Str 733
7 TR 241. 1 East 516. 3 East 164. 2 Ves P. 447. 1000
138. 2 Map 84. 2 Johns 198. 11 do 194. 7 do 117. 3 Cow.
R 525. 1 East 6. 5 Cranch 298. 302.

The Bill is regularly to be delivered to the Payee
Ch 61. par 75. And a person receiving it on
account of a former debt, for which he has
not a higher security, cannot in full sue
for the original debt before the Bill is due
(Ch 62) for receiving the Bill amounts to an
agreement to give credit till that time.
Ch 62. 12 Mod 517. 5 TR 52. 7 do 44. 1 East 5. 106.
5 TR 573. Sal 442. Skin 410. ^{Consign} And "Merchant" 417.
vici "Assumpsit".

If altered while in the hands of payee or (32)
other holder, in any material respect (ex in
sum or date) without drawer's consent, he is
discharged even as is a subsequent bona fide
Holder. Ch. 62-3. 4 TR 320. 5 do 357. 2 N B 141.
1 Austrin 225. not his act when so altered.
Even one taking any security must run the

Bills of Exchange or

risk of forgery or take means to guard vs it -

So - of Acceptor & Indorser if altered after acceptance or indorsement without the parties consent (It) not the instrument accepted or indorsed.

Locus (i.e. in favor of a subsequent bona fide holder, I suppose) if altered before acceptance or it is then the instrument accepted or and the holder has been in no fault - Ch 63 - Beaves Pl 144. Mar 138. 140.

And the consent of any party it seems will estop him from taking advantage of the alteration - Ch 63. 4th Ed 320.

But the party making the alterations without consent can in no case recover vs any one I conclude &c. Alteration by Payee before acceptance, bill then accepted, action was accepted by Payee & Co. 272.

(33) The Drawer by the act of drawing & delivering the bill impliedly engages to Payee. & every subsequent bona fide Holder.

1st That Drawee is legally capable of accepting (p 39. Ch 63. 71 -)

2. That he is to be found at the place described if it be described in the Bill p 37.

3. That on due presentment of the Bill he

Bills of Exchange or

53

will accept. & in writing if required & according to the tenor. &

4th. That on due presentment it will be paid when due Ch. 63-4 70-1-2. Ryd 109 &c Long 55. 2 N D L 378. 1 Esp 511. Pitt 108). L^d Ray 7.

Same implied engagement by every indorser to indorsee & subsequent bona fide holder 3 East 481. 3 Mass 559. 4 Johns 144.

Exception where the Payee or Receiver expressly agrees to assume all risks - & the rule does not hold as to him who transfers the bill upon a discount. p 66. 77. Ch. 63. 180. 109.

121-3. 3502 757. 7 D L 55-6 1 East-447. Cooks D L 120 Ryd 90-1- L^d Ray 442. 12 Mod 241. Sal 128.

L E. Where it is transferred by mere delivery for a sum advanced at the time, & by way of sale, & not in payment of a debt - either prior or accruing at the time

But this exception does not extend to any one whose name is on the Bill as Drawer or indorser. Ch 109. 123-4. 15 East-7.

A transfer on discount is a transfer as above by the Holder without his endorsement.

Where indeed a Debtor transfers a Bill without endorsement, tho' not liable on the Bill - he is nevertheless liable, in case of its being dishonored for debt -

If there is a failure in any of the above implied agreements, the Drawer is liable immediately (tho' the day of payment has

Bills of Exchange &c

not arrived) for the amount of the Bill & in some instances for damages, interest & costs.

2 NDE 379. Ryd 109. 111. - Dorr 55. Beaves 459. Ch 64. 100. 136. 3 Dorr 1687. Ball 289. 1 Dorr 669. 6 M 52. 139. 3 Wds 16. 17. 1 NDE 634-5 arg^o.

The rule is the same as to the Indorser. 3 East 481. 3 Maf 557. 4 Johns 144 -

(34).

Drawer is thus liable whether the Bill was drawn on his own account or another's. Ch 64. Beaves 469 Ryd 115.

But suppose after the day of payment the Holder brings his action on the Drawer or Indorser for non acceptance. without having made a demand for payment. Where the action lie? See 4 Johns 144. that it will lie see 3 East 481. 3 Johns 202. 3 Maf 557. 1 Selw. 362. (2 42) 6th 81 -

This obligation is irrevocable, Thus where a bill is drawn upon one in a foreign country, who by the law of the country is prohibited from paying it. Drawer is liable - Ch 62. 2 NDE 378. Ryd 117. Poth. Pl 58.

But Holder may lose the benefit of these engagements by his own neglect. Ch 65. post.

(35).

Presentment for acceptance.

It is in some cases necessary & in most cases expedient, for the holder if he receives the Bill

Bills of Exchange &c

Before acceptance, to present for acceptance
p 109. Ch 66. Kyd 117. & ult.

Where the bill is payable within a limited time, after sight; or after request - I suppose presentment for acceptance is necessary - Scas the time of payment will never come - Ch 67. 86 202. Kyd 117. 154 DE 565.

But in other cases not necessary (tho' advantageous to the holder) to present till it falls due Ch 67. Beaves p 280. 154 DE 712. 5 Ban 2670 Mar 46 Com & Merch. F. B. Dorr. p 143. 2 Show 440 Kyd 118.

And where it otherwise would be necessary. Holder may excuse his omission by proving that neither is drawer nor endorser, has any effects in the hands of drawee - So by any other fact which shows that debt could not have been injured by Holder's neglect - Ch 68. 87. 102. 132. 202. 3. 154 DE 336. 569. See Kyd 129. 136. 254 DE 717. 184 DE 302. As that drawee was insolvent & has continued so till the time of payment, provided that fact was originally known to the drawer, or other party sued * 154 DE 410. 254 DE 336. See do 609. Case different not contradictory So 13 East 137. 7 do 359. (* See Bush v Cotton 2 Com R 126. (in case of a note) 2 Camm 343. 4 Cranch 161. 2 Hays 45. 10 Mass 52. Just 52.

Bills of Exchange &c.

35).

The rule as to the time of presenting for acceptance where the bill is payable after sight is - that due diligence must be used by the holder i.e. to be presented within a reasonable time, under the circumstances of the case. Ch 68-9. Ryd 17. 18. 2 NDE 569. Poth R 143. 75R 425.

So (as Chitty says R 68.) of bills payable at sight that they must be presented for acceptance. Sent to D. G. not correct - The rule in the other books relates to presentments for payment. Ch 47 R 35. Presentment for acceptance can not be necessary unless days of grace are allowed. But they are generally not allowed when payable at sight.

What is a reasonable time is said to be a question of fact for the Jury 2 NDE 569. 75R 425 arg^o. It seems to be a question of Law (the facts being given) for the sake of certainty - Tho' whether there has been reasonable notice in any particular case is a mixed question i.e. before the facts are ascertained R 10. 58. 87. Ch 69. 96. 137. Beaves R 229. 45R 118. Bony 515.

Presentment should always be made in the usual hours of business R 67-8. Ch 69. 148.

37)

Said that Drawee ought to refuse or accept immediately on presentment. Comyn. Merch. & C.

It is usual however to leave the Bill with him for 24 hours (that he may examine his acc^t. with drawer) unless he voluntarily refuses to accept sooner. Mor 16. Ch 70. L^d Ray 281. Osborn p 17. Ryd 126. If he does not accept within that time the bill may be considered as dishonored. Ch 72.

But it is said that this delay is not to be allowed if the mail goes out in the mean time. Ch 70. Mor 62. Am. Merch^t. 56.

If drawer is not to be found at the place described & it appears that he never resided there or has absconded, the bill is considered as dishonored. Ch 70. 89. 128. 136. 182p 516. L^d Ray 7. 743. Mor 27. 111. 112. Osborn p 22. 24. 26. 29. Ryd 125. 127.

But if he has only removed presentment should be made at the place to which he has removed & the presentment should be if possible to the drawee himself p 33. 83. Ch 70. 135-b. Stra 1087. Bayk 58.

Seems if he has left the Kingdom or State. Holder not bound to follow him - presentment at his house suff^t. Ch 70. 182p 511.

If drawer is dead presentment should be made (38) to his personal representatives, if to be found within a reasonable distance p 80. Ch 70-1. 132-b. Poth p 146.

Bills of Exchange &c

391

Acceptance

Acceptance is the act of engaging to comply with the request contained in the bill. p106
Ch 71. It may be either in writing or by parol.
p43. Ch 75-b. 200.

Acceptance by agent if duly authorized is valid but if required he must produce his authority to the holder; Secus it may be considered as dishonored.
p14. Ch 23. 71. Beames pl 87.

Doubtful whether Holder is bound in any case to acquiesce in acceptance by agent as it multiplies proof. 16cp. 115. 209 Ch 71-2.

Acceptance by one partner for both binds both (p16)
But if a Bill is drawn on two not partners & accepted by one only in his sole name the other is not bound & it may be considered as dishonored. Ch 29-73. 112.
Bull 279. Beames 228. Holt 297. Mar 16. ante 16.

If drawer is found to be an infant, feme covert or otherwise incapable the bill may be treated as dishonored. p 33. Ch 63. 71-2.

A promise to accept in future will operate as a present acceptance even tho' by parol Ex. Leave the bill & I will accept it" for it gives the Bill credit & prevents protest or notice. p43. Ch 75-b. 77. Bull 270.
Mar 17. In Comp 573. 3 Bun 1669. 1. Wils 64. 5 East 514.

Bills of Exchange &c.

95

A promise to Drawer to accept a Bill to be drawn in future is binding, if attended with any circumstance, which may have induced a 3^d person to take it. Letter to Drawer "I will duly honor your Bill" Shewn to indorsee before he takes it. Ch 77. Cowp 571. 573-4. 1 East 98. Ryd 74. 81. Drawer 454. 466. 1 Atk 64. (611) 715. 3 Burr 1003. 2 Wheat-
00.

Acceptance after the day of payment will bind acceptor. tho' drawer and indorser would be discharged unless duly notified of a previous non-acceptance or non payment. Ch 73. 4. 81. Mod 410.

In such cases acceptor is liable to pay on demand Ch 74. 2^o Ray 364. 574. Sal 127. 129. Carth 45. 12. Mod 410. Com R 75. Drawer p 224.

Drawer tho' having effect of Drawer is not safe in accepting a Bill after he knew of the Drawer's failure it under the Eng. bankrupt laws Ch 74. 157-2. Poth pl 46. 2 N B 334. For he could be compelled to pay over again to the drawer's assignees; cannot retain vs them.

But if he accepts without notice, he may safely pay the Bill after notice & will not be liable to the bankrupt assignees &c Ch 74. 152. 7 52 711-

Acceptance may be absolute. Conditional or partial. Ch 74. But unless the acceptance is absolute the holder may consider the bill as dishonored p 13. Ch 74. 23. 103. 180. Poth pl 47. Not bound to ac-

Bills of Exchange &c

= quiesce in any other than an unqualified acceptance for the whole amount of the bill.

If holder is satisfied with a conditional acceptance or one varying in any form from the tenor of the bill it may be so accepted & if he gives due notice of it to the prior parties they are not discharged by it. Ch 74-5-79. 81-2. Str 214. 640. 1152. 1194-12. 2 Com 452. Poth O 48. 11 Mod 190. 2 Wils 9. 152 182. Ryd 152-6-

What amounts to an acceptance is a question of Law. Ch 75. 152 182. 186.

42) An absolute acceptance is an agreement to pay the bill according to its tenor. Ch 75. Ryd 47-

Acceptances are now almost universally in writing formerly verbal Ch 75.

The usual mode is by writing "accepted" and subscribing Drawee's name, or by writing "accepted" merely Ch 73-75. or the mere name of the drawee called a blank acceptance.

Holden that if a Bill is payable in a City. It must by the acceptance be made payable at a particular place or house there. Rem protestables p 50. Ch 75-6. Comy R 75. L^d Ray 574. The drawee appoints the place -

Is this rule observed in practice?

In j^{ur}l any act of the drawee evincing his consent to comply with the drawer's request. will amount to an acceptance Ex. "Seen" "presented" "day of the month" or a direction to a 3^d person to pay it - if written upon it or on another paper relating to it. Ch 76. Poth pl 45. Vin Bills of Exchange § 4. Comb 410. Bull 270. Ryd 80.

Writing not necessary. Verbal acceptance is binding (43) Ch 76.7. Hardw. 74. 278. Stra 648. 1000. Holt-297. 1 East-182 103. Mars. 65.17. Ryd 69-72. 3 Burr 1674. Comr 571. 270 Ch 9. 4 East 72. So (in favor of Holder) tho' no consideration for it - Ch 77. 82. Burr 1669. as to drawer (between acceptor & drawer) even when the acceptance is written tho' this has been doubted. (p 8. 47.)

Said to be a distinction between promise to accept in future. or a consideration executed & one executory. latter said not to be binding while it remains executory. (Bayl 46. Ch 77.) unless it influences some one to take or retain the bill - (The promise intended in the rule is one to drawer I suppose)

And a promise to accept obtained by fraud or misrepresentation does not bind Ch 77. 3 Burr 1669. is I suppose in favor of the party practising the fraud even as to the subsequent bona fide holder. p. 28. Ch 82.

An acceptance by letter is binding Ryd 69. Stra 648.

Acceptance may be implied Ch 76.7 - But to con-

Bills of Exchange &c

It is stated such an acceptance there must be some act or circumstance from which it may be inferred, that holder was induced to consider the bill as accepted. Ch 78. Ergo "There is your bill it is all right" no acceptance unless it appears to have been intended to induce the holder to consider it as accepted. Ch 78. East 17. Bayl 48. Hardw. 75. Com de 278 - See 152 269 -

44) But it may be implied from the drawer's keeping the Bill a great length of time Ch 77. 1 Atk 611. Hardw 278. Poth pl 46. Presumption may be rebutted Ch 79. 1 Atk 611. 24 hrs is the usual time allowed to accept a bill.

So by any act which gives credit to the bill & induces holder not to protest Ch 77. Bull 270. Hyas.

An engagement to pay the Bill, not absolutely but on some contingency - is called a conditional acceptance Ch 79. 152 182.

Holder not bound to receive it but if he does he should give due notice of the nature of the acceptance to the prior parties. Secus they are discharged. p 46. 51. 54. Ch 74-5. 72-23. 103 - Hyas 161. Poth pl 47. Acceptor bound by it if rec^d. Ch 180-1

Ex. accepted to pay "as remitted for" on account of such a ship when in cash from her cargo "as soon as such goods are sold" Ch 79-80 Pitt 1152. 1212. 270 Ch 74. 12 Atk 447 -

Comp 571. 1502 182. See Str - 648.

A conditional acceptance if acquiesced in (45)
becomes absolute, as soon as the event - on which
the condition depends happens - p 61-106. Ch 101-
80-1. Str 1212. Hard 76. Comp 571. 1502 182. If holder
not not - acquiesce in it - it becomes null & void

If the acceptance is in writing, the condition
intended should also be in writing. for verbal con-
= dition annexed to a written acceptance will
not avail the acceptor, as or any subsequent hold-
= er, if either he or any intermediate holder
took it for a valuable consideration & without
notice of the condition. Ch 81. Hardw. pl 3.
Bayl 51. Day 286. or 296. Yet it will bind the
Holder tho' the condition annexed be verbal
for he is aware of the condition -

A partial acceptance is an unconditional
one, but varying from the tenor of the Bill *.
Engagement to pay part - or to pay at a differ-
= ent time or place - or part in money & part in
goods - or bills &c Ch 81. Str 214. Comb 452. Mar 68.
84-5. Mollay pl 26. 263 or 283. P. M. pl 48-11 - Mod
180. or 190. Str 1194. Bayl. 78 n. a.

* If also conditional it is called a Partial &
Conditional acceptance -

Holder may refuse such acceptance & treat the (46)
Bill as dishonored - But if rec^d. the acceptance is bound
by it. pl 44. Ch 81. & authorities to last rule -

Bills of Exchange &c

When the acceptance is partial & acquiesced in the Holder if he intends not to discharge the prior parties must give them due notice of the nature of the acceptance p 44. 51. 76. Ch 82. 85. 150 182.

If he gives the prior parties notice of non acceptance generally he waives the acceptance - This shows that he does not acquiesce in it & is an inducement to the other parties to make arrangements for their own security p 49. Ch 82. 85. 157. 150 182.

Whether the acceptance is absolute conditional or partial is a question of Law. 150 182.

47) By an absolute acceptance the Acceptor is bound to pay according to the tenor of the Bill; by a conditional or partial one according to the tenor of the acceptance. p 45. Bayl 42. Poth pl 115-7-764. 400 174.

Acceptance is binding in favor of a 3^d person (a payee indorsee &c) tho' without consideration money to the acceptor, & that fact known to the holder, p 43. Ch 950 951-2. 82. 1 Wils 187-8. 300 183. 4 do 339. Poth pl 118. 121- Mollay pl 83-

Hence acceptance by Ex^r on account of debts due from testator is an admission of assets & will subject him personally if there are no assets. Ch 82. 3. 111 -

107

Bills of Exchange &c.

- 12 - 274 BE 622. 3 Wils 1. 2 Plin 1260. 2 Bams 137 -
Dun 1225. 150 487. So of indorsement by Executor
p 68. Ch 112.

This obligation is irrevocable & can not in general
be discharged except by payment - or an express
waiver - Ch 83. Mar 83. 145-b. Both pl 71. 118. 174
BE 88. Ech 47.

If acceptance is in a foreign country, by the
laws of which it becomes invalid, it is of no
force here Ex. case before of acceptance at Leg:
- horn. p 30. Ch 59. 60-64. 83. Plin 733. Selw Ca 144.

May be waived or released by the Holder without (48)
deed or writing. by bare parole of agent Ch 83. 197-7.
Long 247. Ech 47. "Contracts" -

And it has been said that what amounts to
an agent or agreement to discharge the action
is a question for the jury. Ch 83. Long 247. or 236.

Sed qu. For since holder that in full nothing
but an express consent would amount to a
discharge by the holder (p 46) no indulgence or
delay is construed into a discharge. Ch 84.
Long at sup. Ech 47. Hyd 159.

A gen'l release by Holder to drawer, after the
bill drawn, but before acceptance, is no discharge

Bills of Exchange &c

of the subsequent acceptance - For he was not liable at the time of the release. Ch 84 -
 2 Ray 65. do 518. 519. 5 Co 706.

An agreement to consider the acceptance as at an end. was held to be binding - So a ref: -
 - says to Acceptor that the business was settled with drawer & that he need not trouble himself further * decided to amount to waiver of acceptance. Ch 84. Dory 236-7. or 248. (* This was upon an accommodation bill Qu. does that make any difference? -

To an entry in plff's Book to this effect - "A's acceptance annulled". Dory 237.

6491

It has been doubted whether receiving part from drawer & taking his promise on the back for the residue at an enlarged time, will discharge acceptor. Ch 84. 156-7. Cas cited Dory 248. I should think not. No express waiver & no injury to Acceptor, he being first liable 2 Wils 262. 1 East 517.

It has been determined that an alteration by Holder of a Partial into an absolute acceptance and on Acceptor's refusal to pay - an alteration restoring it to its original form does not discharge the partial acceptance p 32. Ch 85. Deane, p 222. Molloy 28. 4 M 336. Qu -

Bills of Exchange &c

111

If Holder agrees not to sue acceptor, if the latter will make affidavit, that the acceptance is forged or does make it & swear to it; acceptor is discharged the the affid.^t is false Ch 85. Peake 187.

1 Eep 178. Bayl 458. For the condition of the warrant is complied with -

Where a future consignment to Acceptor, & the prospect of profit on it, are the consideration of acceptance, the holder's agreement to take the bill of lading from the acceptor discharges him. (p 48) Ch 85.

So, a conditional or partial acceptance, is discharged by a general notice of non acceptance (p 46. Ch 82. 5. 172 182.) i.e. notice as of an absolute refusal to accept. It is thus treated as no acceptance -

Holden that if Drawer by acceptance makes the money payable at a Banker's & it is not presented there for payment, the acceptor is discharged, if he would sustain damage by holder's neglect - Ex Banker afterwards fails. - p 42. 82. Ch 85-6. 2 Stra 1195. Bayl 78. It is - (50)

The act of acceptance (when the terms of it import nothing to the contrary) implies that acceptor has effects of Drawer. Hya 156. Deane 455. 120ils 185. Sal 130. 12^o Ray 88. Ch 191. 203. 205. If then drawer is compelled to pay he may recover vs acceptor. Hya 156. 120ils 185.

Bills of Exchange &c

If indeed acceptor has no effects of Drawer & yet pays the Bill he has his remedy vs the Drawer p 57. 92. 93. 105. 110. Ryd 156. Ch 183. 191. 203. 205. But as to all other parties (as the indorsers) the acceptor is considered the original debtor & first liable Ryd 156. Sal 127. 131. 1 Will 187. 190. even tho' he has no effects of Drawer.

If Holder makes acceptor his Executor and dies the latter is at law discharged p 98. Ch 181. 1 Rd 922. Plowd 184. 543. Sal 299. 2 DC 511. 12. 3 ds 18. For the right & duty are united in one person. Pow. Ch 5.

In this case the other parties (as Drawer or indorsers) are also of course discharged at Law. their obligation being secondary & the primary one being discharged, the secondary one is necessarily so. (26)

(51)

Non acceptance is a refusal or omission to comply with the request contained in the bill.

Presentment for acceptance necessary only in case of a bill, payable at a fixed time after sight p 33.

But if in that or any other case, presentment for acceptance is made, and acceptance is, wholly refused or offered only conditionally or partially; notice must be given to the prior parties or they will in gen'l be discharged. p 44. 59. 60. 90. 102. Ch 54

Bills of Exchange &c.

115

65. 66. 158. 202. 5 Burr 2670. 15R 712. 1 Vent 45. Poth
pe 133. Long. 658.

Necessary that the prior parties may secure
themselves (Ch 97).

Formerly holden that a prior party (as drawer or
indorser) insisting on want of notice of non accep-
tance must prove damage sustained by the omission
Ch 87. 1 Show 318. 12 Mod 15. Comb 152.

Now settled contra. Drawer is presumed (so
far as regards the question of damage in the case)
to have had effects in drawee's hands & indorser to
have given value. Ergo Holder must prove prior
party (the deft) has not sustained damage by the
omission (or facts affording such an inference, in
order to subject the latter. p 60. 62. 111. Ch 87. 203. 132-3.
15R 406. 409. 1 Vent 45. 2 N D C 612. 1 Show 317. Ryd 129 &
Ch 191. 203-5.

Thus. If from date to the time of payment drawer (52)
had no effects in drawee's hands. he is *prima facie*
not-entitled to notice. Presumed that he can sustain
no injury from want of notice p 60. 81-2. 35. Ch 87. 202-3 -
15R 415. 712. 2 do 713. 2 N D C 610. 1 Eccl 333. 2 do 515. 537. 3 do 158.
Ryd 129 & - Bos & 652. 55R 259 -

But if he had effects, the fact that he has sustained
no actual damage by want of notice, does not dispense
with the necessity of it. 3 Eccl 158. 1 do 333. 7 East-359. A debt-
due from drawee to drawer (as well as goods of drawer)
is effects within the meaning of the Rule.

Bills of Exchange &c

So it has been resolved, that the payee of a promissory note indorsing it with a knowledge of makers insolvency (he having been originally & continuing insolvent till the day of payment) can not defend on the ground of want of notice - of non-payment by maker. The indorser's liability being regarded as virtually primary. Ch 87-8. 2 N D C 336. 17 R 410. 16 Ch 302. 303 n. 2 Cairns 343. Peake's 303 n. - Contra 4 Cranch 161. 10 Mass 52. 1 Com R 126. 2 N D C 659. 13 East- 187. 7 do 559. diff: but not contra p 35.

Tho' indorser has effects in drawer's hands yet if drawer has none he (drawer) cannot avail himself of want of notice. Ch 88. 16 Ch 515.

Securities lodged by drawer with drawee or acceptor, for the purpose of raising money, - but on which none has been raised, are not such effects, as enable drawer to defend for want of notice. Ch 88. 16 Ch 516. No indebtedness

But if drawer had effects &c at the time of drawing the bill; no subsequent occurrence will dispense with the necessity of notice - tho' notice might not be of any use. Ex. death supervenient, bankruptcy, or unknown insolvency of drawer. Ch 88. Toth 146. Long 497. 515. 2 N D C 612 7 East 559. 13 East- 334 n. Kyd 131-

Drawer's liability not considered primary.

So of indorser (ie he cannot be subjected without notice) if a valuable consideration passed from him at the time of taking the bill Ch. 88.



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Bills of Exchange &c.

119

Drawee's having informed the drawer beforehand (ie before (53) presentment for acceptance of payment) that he could not honor it is no cause for omitting notice. Ch 68. 89. 132. 202-3. 205 336. 612. 1862 332. 2 do 515. 5-TR 239. 1 do 405. 712. 285. 2 BE 2 624. 390 1000 or 652. 3 Burr 1355. Story 637 -

Drawer's having no effects in drawee's hands affords a presumption that the former has sustained no injury by the want of notice. But this presumption, it is said may be rebutted by proof of actual injury. Ch 87. 89. See also 2 TR 713. 1 do 714. Sw. Ev. 290.

If drawer or indorser is a bankrupt at the time of drawee's refusing to accept or pay - notice to him of the refusal is unnecessary. Cui bono? Ch 89. 3 Br. Ch 1. (Cooks R 168. Sent contra) But notice should be given to his assignees if known. But notice to him is not notice to them.

So if drawer absconds. For Holder is not bound to search for him. p 81-2. Ch 89. 2 Ex 516.

So neglect of reasonable notice is excused by death or sudden illness of the Holder if given as soon as possible afterwards. Ch 89. 10th 144.

If drawee make a conditional acceptance the terms of which are complied with by Holder no notice to the other parties is necessary. p 44. 56. Ch 89. 90. 101. Bayl 71. For it becomes ipso facto absolute. Ex. To pay if Holder will engage to indemnify (54) & he does engage to indemnify (Suppose the compliance to take place at a subsequent time. p 61. Ch 101) -

Bills of Exchange &c.

If drawee accepts for part only, the prior parties are bound to the extent of the acceptance without notice, for to the extent, the acceptance is absolute p 46. Ch 90. Seem as to the residue, as to that the bill is discharged. & they are not liable without notice - Ch. 90.

Mode of giving Notice.

The manner of giving notice that a bill is dishonored - is different in the case of foreign from that in the case of an Inland bill. Ch 90. 15R 170. In the latter no particular form is necessary. Ryd 136 & 142. In case of foreign bill, whenever notice is necessary, a protest must be made. p 109. Ch 90. Ryd 136. Mart 16. 2^d Ray 993. 6 Mod 8. 1 Sal 131 Bull 271. 25R 713. 5th 239.

Not supplied by oath of witnesses Ch 91 -

That being the conventional mode of proof established by public commercial Law & the only mode recognized by the Law.

The protest is in general to be made by a notary public Ch 90-91. 1 Show 164. He being an officer recognized by the Law of all civilized states - The office is by institution of public Law.

After refusal presentment is to be made to the notary public & if the drawee still refuses, the bill is to be noted for non acceptance - A formal declaration is then to be drawn on the bill if to be had (if not

Bills of Exchange.

123

on a copy p 80. as when the original bill is lost -
called the Protest. Ch 90-1. Hy a 136.

Full credit is given to the protest in all foreign
Courts p 109. Ch 91. Mol 281. Skin 172

Noting is only preliminary to protest and does not
supply the place of it Ch 91. 25R 713. 4-175. Bull 271
Hy a 127.

Protest must be made by notary himself not by his
clerk. Ch 91. 45R 175. Hy a 137.

If however a notary cannot be obtained the bill
may be protested in Eng^d. by any substantial person
of the place (where dishonored) in the presence of two
or more witnesses p 56. Ch 91) in the regular hours of
business. or at least between sun rise & sun set.
p 7. Ch 91. Hy a 137. 143 Ch 95. Forns. Hy a 144. must
conform to the customs of the place where made.
Ch 92. 159. 161. Both pl 155.

To be made in place where the bill is dishonored
but if the bill is directed to one at A requesting
paym^t. to one at B. the protest may be made at either
place Ch 92. Map 107.

A copy of the Bill is prefixed to the protest Ch 92.
Both pl 155.

(56)

Bills of Exchange &c.

But a copy of the protest need not accompany the notice of a non acceptance tho' notice of a protest must be given. Ch 92. b. 2 74 & 569.
2 Esp 511-12. Bull 291. 12 Mod 309. 1 Vent 45. See Poth p 155. that a copy of protest is to be sent.

Not necessary to send the protested bill Ch 92. May 68. 86. 7. 120.

Inland. Upon non acceptance of an inland bill, no protest is necessary to subject the prior parties, any act evincing drawer's refusal, is a non acceptance Ch 93. 6 Mod 80. 1 Sal 131 - 304. 2 Ray 992 And such refusal may be proved like any ordinary fact - no prescribed form of proof.

Said (1702 169) that the notice must express holder's intention not to give credit to drawer.
See. Ch 93. 7. 8.

At C.L. an inland bill could not be protested. But by Stat 93 & 4 Ann protest is required in certain cases, for the purpose of entitling holder to costs, interest & damages - p 26. 80. 91 - Ch 93-4. Str 910. Hyd 143-4. By whom made Ch 94. Hyd 150.

(157) But notice of non acceptance must be given in case of an Inland, as in case of a foreign bill Ch 95. Hyd 150.

In the case both of foreign & inland bills, notice

Bills of Exchange &c.

127

sent by the Mail is suff^t. tho' the letter should miscarry - p 116. Ch 95. 2 N BE 509. Barnidiston 199. Peak Ev. 221. Poth pl 565.

When no mail sending by the first direct and ordinary conveyance is suff^t. tho' there may be an earlier accidental conveyance. Ch 95. 2 N BE 565.

It seems that in the last case of foreign bills protest must be made in the usual hours of business on the day of refusal p 55. Ch 95. 162. 4 D R 174. 2^d Ray 743-4. Mars 112. Du. Bull 271. Ch 95-6.

Delay excused by inevitable accident or sickness or robbery, or some such cause. pl 36. Ch 95. Poth pl 144.

Notice of non acceptance & (in case of foreign bills) protest must be sent within a reasonable time (p 10. 36. 87) to the parties to whom the holder is = tends to resort Ch 96. 7. 2 N BE 569. Bull 271. Ryd 267. Whether it was sent within a reasonable time is a question compounded of Law & of fact - to be submitted to the Jury under the direction of the Court. 6 East 3^d 1 Camp 248. 8 Johns 177.

It should be given on the day of non acceptance (587) if there is on that day any post or ordinary conveyance - If not by the next ordinary conveyance p 88. 91 - Ch 96-7 - 153. 4 D R 174. 1. 168. 2^d Ray 743. 2 Plt 829. 2 N BE 565. Ryd 126-9. Long 177. // within

Bills of Exchange &c.

two months was formerly holden suff^t. Ch 96.
 1 Mod 127. 12th 15th. Comb 152. 1 Show 308.

If such prior parties reside in the place where acceptance is refused, notice should be given if possible on the day of refusal - to parties at a distance by the same day's post if any Ch 97. Hyda 126. 1502 169.

(59) It has been held that notice required must come from the holder 1502 169. Hyda 126. Ruled contrary by 2 Henry 1798. & that notice by drawer was suff^t. Ch. 98.

Subst. notice by one party having a right of action on the bill may serve to the benefit of the other parties, who may have claims upon those standing before them & make further notice unnecessary.
 Ex by 2^d Indorser will operate in favor of the first Ch 98. Bayl 83.

It is expedient however for each party - after the drawer to give notice for himself.

Necessary (when necessary at all) to be given to all the prior parties to whom the Holder intends in any event to resort for payment. p 51. Ch 86. 98. 9.
 5 Burr 2470. 1502 712. 1 Vent 45.

This drawer had no effect in drawer's hands

Bills of Exchange &c.

131

this does not dispense with the necessity of notice to any indorser to whom the holder resorts Ch 99. 17R 712. Pea 202. 3 Dayb 175. Pea Ev. 221.

Want of notice to the Drawer is no defence to indorser (this formerly thought otherwise 2^d Ray 443. Sal 131. 3) 1284. 40. Ch 99. 203. 2 Burr 449. 1 Esp 334. Indorsing (60) is equivalent to drawing a new bill -

The consequence of neglect to give notice of non acceptance (of which see p 51) may be waived or avoided by 'mater ex post facto' Ch 101-2.

Thus payment of part; by prior party amounts to a waiver of the obligation arising from want of reasonable notice & admits his liability - Ch 102. 132-3. 158. 202-3. Str 1246. 2 7R 713. Bull 276. Peck 202. 1 Esp 57.

So a promise to pay the whole (It) seems it has been held if a promise was made without a knowledge of the fact of non acceptance - Ch 102. Burr 2674. 17R 712. Dory 657. arguendo. nudum pactum.

But this doctrine appears to have been overruled & resolved that such promise implies an admission that due notice has been given & supports an averment of it in the declaration. 1 Esp 334. n. 7 East 231-b. See 1 B & P. 326. 2 East 464.

And it has been holden by 2^d Henry on that a pro- (61)

Bills of Exchange &c.

= mise by a prior party without knowledge of the legal consequences of Holder's neglect - does bind.

Ex. When the Holder gave further time to the Acceptor & the Acceptor was notified of the fact, but still promised to pay - Ch 102. 3. & n 158. (See 2 East 469. That the party's ignorance of his legal right does not in: - validate his promise.

Decided in the same case that Drawee having paid the Bill under such promise, may recover back the amount from the Holder Ch 102. 3. 208 R 824. 11390. - 2. 170 R 285. Bay 637. 3 Burr 1355. Would the action lie?

In case of conditional acceptance want of notice is cured by "completion" (performance) of the condition - becomes payable, p 54. Ch 101-2. Bayl 71. For the acceptance then becomes eventually absolute p 45. Ch 80-1. St 112 - Plender 74. Comp 571 1702 182.

When a foreign Bill is protested for non acceptance, it may be accepted supra protest. p 13. 91. Ch 28. 103. 122. 163. 180. 209. Hy 152-6.

(62) The Drawee may thus himself accept for the honor of the Drawer, or any Indorser. Ch 103. Beaum, Pl 33-4

This is the usual course when the Bill is drawn on account of third persons & the drawee tho' unwilling

Bills of Exchange &c.

135

to accept on his account - is willing to accept for the account & honor of the Drawer. Ch 103. Kyd 152. Peak 456. 1000 C 139. 15R 269. So if unwilling to accept on drawers account - he may do it for the honor of indorser in which case he should immediately send the protest to indorser. Ch 103. Peak 33-4 -

This mode of acceptance operates to rebut the presumption (arising from simple acceptance) that the acceptor has effects of the drawer in his hands, Remb. p 51 - 115. & Ch 209. 210. Kyd 154. Peak 455.

The effect of such an acceptance then, is to give the acceptor a right of indemnity on the bill, ^{for} the party for whose honor &c & of course vs all the parties before him. Whereas a simple acceptance according to the tenor gives no right except vs drawer or him on whose account the bill is drawn. p 66. 92. 8. Kyd 153-5. Peak 458. 15R 269. 1000 C 139. & even as vs the latter - it gives no right of action on the bill - Such acceptance then reverses the obligation on the bill - as between such acceptor & the party for whose honor &c - tho' it imports no obligation in favor of such acceptor vs any of the subsequent parties.

If Drawer refuses to accept at all any other person may accept for the honor of the drawer p 65. 92. Ch 104. Peak 38. Earth 129. Kyd 153.

(63)

Acceptance for the honor of the "bill" is the same as for the honor of Drawer. Kyd 153. Ch 104-5.

Bills of Exchange &c.

And a bill previously accepted *supra* protest by one person may afterwards be accepted by another for the honor of a diff^t party, Ch 101 - Peak pl 42.

Said that the Holder is bound to receive an acceptance *supra* protest when offered by a responsible person (its being under protest not-affecting him) unless he has such orders from the party remitting it to him not to receive such acceptance Ch 104.

But this seems not to be Law - Holder need not receive such acceptance in any case. Ch 104.

12 Mod 40. Hyd 155. (If Drawee refuses to accept (according to the tenor) holder's right of action ag^t the prior parties is complete. on his refusing any other acceptance.

14! If after acceptance *supra* protest, by a 3^d person the Drawee is willing to accept - the Acceptor *supra* protest may with the consent of the Holder permit it (not without) & the Acceptor *supra* protest will be discharged. Hyd 154. Beames 457

Holder should have the Bill protested before he receives an acceptance for the honor of a party. p 43. Secus, it is said drawer may object, that the person accepting is not the one drawn upon. Chit 105.

As to the Mode of accepting *supra* Protest -

The Acceptor appears before a Notary Public with witnesses & declares that he accepts the pro-

Bills of Exchange &c

139

= test bill in honor of the Drawer or Indorser
& that he will satisfy it at the time appointed.
Then subscribes it thus - "Acceptance supra pro:
- test in honor of A.B." or "accept C.D. Ch 105.
Hyd 153.

Acceptance supra protest is as binding on acceptor as
if no protest - Immaterial to the Holder on whose ac-
- count it was accepted. Ch 105. Beaves 1d 34. 45. L^d Ray 575.
12 Mod 410. Com R 76. 3 Burr 1672:4 -

The liability of an acceptor supra protest to the holder &
indorser is the same as that of the party for whose honor &c
Hence if accepted for the honor of the "bill" or of the drawer
he is liable to all the indorsers as well as the holder, to all
the parties subsequent to the drawer. Ch 105. 16ep 113. Hyd
153. Bea 457. For as to them he assumes the responsibility to
which the protest subjected the drawer.

If the acceptor in honor of a particular indorser - he
is liable to all subsequent indorsers, ^{but not to any prior indorser} or drawer Hyd 153.
Bea 457. Ch 105. For the extent of his liability is no greater
than that of the party for whose honor he accepts.

N. B. On the other hand the Acceptor for the honor of
a particular party acquires (by paym^t.) as as other
parties, the same right as the party for whose honor
or would have thus acquired & the same right as that
party as the subsequent parties would have had
in case of non acceptances.

Bills of Exchange &c

Such acceptor therefore has a right of indemnity as the party for whose honor &c & as all the prior parties, & if he sustains damage, may have his remedy by action on the Bill p 62. 3. 92. Ch 105- 6 172. Beanes Pl 47. 17R 269. Ch 115. 164. 1 Porw Ch 139. 18 Ep 113. Hyd 155. For as to these parties he is in the character of an Indorsee.

If then he accepts for the honor of the drawer the latter only is bound to indemnify him - The indorser not liable - He accepts for Drawer only & of course can acquire ^{no} other rights as others, than Drawer had. Ch 106. 163-4. Hyd 155. Peak 459.

If for honor of Indorser the Acceptor's claim for indemnity exists against that Indorser & against all prior Indorsers as well as the Drawer; but not as to the subsequent Indorsers, for he acquires only the same rights as the Indorser for whose honor &c. had. Ch 122. 164. Beanes 459. pl 35. Hyd 155. Poth p 111-12. M & C 2. com. Sec. Ch 106 -

Of Transfer.

Bills payable to A or order, or the order of A, to A or Bearer, or to Bearer, are transferable - i.e. negotiable in infinitum p 3. 25. Ch 107-8 47. 8. Hyd 63-5. 3 Wils 211. 2 Bl 467. Dun 1517. 27 -

Bankers checks are negotiable p 9. Ch 109. Formerly holden contra as to Bills payable to A or Bearer - Hyd 36. 3 Lev 299. Sal 125. L'Ray 180.

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Bills of Exchange &c.

So of Bills payable to fictitious Payees, or order or to such parties as knew the payee to be fictitious. Ch 109. 3 JR 681. 17 DE 569. (p 25)

Where a Bill is not negotiable a transfer will however operate vs the party making it, as it would if negotiable. p 5. 33. 77. Ch 5. 109. 22. Sal 125. 7. 133. Skin 411. 2 Feb 303. 2 DE 442. Hob 117. Dun 1226.

Whether a Bill is negotiable or not is a question of Law for the Ct. except in new cases - in such evidence of the custom may be rec^d. p 1. 17. Ch 109. 28. Dun 1216. 1 DE R 295. Doug 653 n. Qu. as to extent.

In gen^l a valid transfer can be made only by the payee, or other persons having the legal interest in the bill. Hence the Indorsement by another (even of the same name as Payee) does not transfer the right. Ch 110. 121-2. 4 JR 28. 17 DE 607. In the first instance when payable to order it can be indorsed only by Payee. But if a stranger indorses, that indorsement will bind him as a guarantee. Ch 121-2 - (67)

Same rule holds of a Bill transmissible by mere delivery (p 7. 72.) as a bill payable to Bearer; or payable to order, & indorsed in blank; if the person receiving it, knows that the person transferring, has no right to transfer it. Scus of a bona fide receiver for valuable consideration Ch 21-2. 4. 51. 201-9. 7 JR 427. Hyd 102. 13 DE R 485. Doug 611. or 633. 2^d Ray 738. as also 1 Dun 452. Thus if a Bill is lost or stolen & finder or thief transfers to a 3^d pers. having no knowledge of the fraud. the Holder

Bills of Exchange or

can recover on it - as is the case in regard to Bank
Bills & gen'l currency

(But as to Bills transferable by Indorsement -) A
Bill payable to Bearer - or to order if indorsed in
Blank is thenceforth transferable by mere delivery.

If feme sole being payee or Holder marries, the right
of transfer is in her husband. Ch 110. Stra 516. 3 Wils
53. Sal 20. 96. 10 Mod 246. Hyd 107.

If Payee or Holder becomes bankrupt - the right of
transfer vests in gen'l in the Assignees from the
time of the act of bankruptcy, committed. Ch 111 -
Beaver, 469. 274 DC 335. Hyd 107.

This is according to the Eng. Bankrupt Law - But
according to our Insolvent Law the interest of the
Bankrupt passes only by his own voluntary act. //

See to the above rule 3 Wils 1. 2 Stra 1260. 2 Burr 1225.
1702 487. 174 DC 622.

But if he has before delivered the bill, & omitted to in-
dorse it, he may do it after bankruptcy. Ch 111. Peak 50.

On the death of the Holder the right of Transfer devolves
68). upon his Exec^r or Adm^r. p 47. 81. Ch. 111. 112. 70 Wils 1. 2 Stra
1260. 2 Beaver 137. 1702 487. 174 DC 622. 2 Burr 1225. Hyd 117.

If a bill is made or transferred to two or more the
interest or right of transfer is in all of them collectively
not in one - But this interest or right (if they are
in partnership) may be transferred by the act of one.

Bills of Exchange &c.

147

p 16-7. Ch 28. 9. 112. Doug 653. Hyd 106. But tho' one alone of the Partners may indorse the Bill, the indorsement must be in the name of all or in the name of the firm. to transfer the interest.

If payable to A for the use of B the right of transfer is at Law in A only. The *cestui que trust* has only an equitable interest p 25. 68. 88. Ch 112. 149. Carth 5. 2 Vent 307-9. Skin 264. Hyd 107-8. 2 Show 509.

If a Bill is indorsed to an infant & he indorses to another the latter may recover of all the prior parties - except the infant - Hyd 102. 4 Esp 487 - Therefore the infant's act of drawing or indorsing is only voidable - else if void prior indorser would not be liable - it would be a legal non entity.

So infant's note to pay premium of insurance is a sufficient consideration to bind Insurer to his contract. this also shows infants act to be only voidable. if void Insurer would not be bound -

Bills are usually assigned after acceptance & before the time of payment. Ch 112. This however is not always the case. often done before acceptance, if the responsibility of drawer is unquestioned -

But a transfer may be made (or rather the operative act of transfer done) before the bill is drawn at all. Ex. Indorsing a blank paper & delivering it &c Ch 112. 113. Doug 496. or 514. 174 DC 313-6-9. Hyd 89.

As if A indorses a blank paper & delivers it to B in which case B may draw a Bill - payable to himself or

Bills of Exchange &c.

to A or order. & make it transferable. Such a Bill (name indorsed in blank) is an indefinite letter of credit.

But where one's name is written in blank & another without authority draws a bill over it, he cannot recover on it - tho' a bona fide Holder may.

69. A valid transfer may be made after the time appointed for payment - Ch 113. 14. 1st M 163. 1st R 430. 3rd 80. 2nd 89. 3rd Dur 1516.

But such transfer affording ground for suspicion the holder takes it subject to the equity to which it was subject between the prior parties, if he has knowledge of such equity & perhaps if he has not. p 8. 78 - Ch 113-14. 52 2nd 89. 3rd 83. 7th 423. 12th 230. 1st 2nd 571- 1st R 430. 3rd Dur 1516.

But the party who transfers a bill after it is due, cannot avoid himself of such suspicion as to a 3rd pers. who becomes the Holder for valuable consideration, for the irregular transfer is the act of defendant himself Ch 114. 15. 7th 423. 430.

But an Indorsement after payment binds no other party than the one making it - p 8. 78. Thus when after payment by drawer, the Bill was indorsed, it was resolved that the Holder could not recover vs acceptor (vide sup) Ch 115-76. 1st R 589. 1st 2nd 46. 4th 470. 1st 2nd 184 - Chit 121-2 -

This supposes a payment made at the appointed or at a subsequent time & not to a pay^t. made previous to its becoming due (tho' it is indorsed in

Bills of Exchange &c

the due course of business.) & then the Acceptor should take up the Bill. else he may be justly subjected to an - other paym^t.

A Bill paid in part may be indorsed over for the residue p 75. Ch 115-21. 61- 2^d Ray 230 or 360. Carth 466. 12 Nov 213. 1 Sal 65. 2 Will 265²

The mode of transfer is governed by the legal operation of the Instrument & not of course by the terms of it - (tho' gen^lly the legal operation & the form are the same)
Ex. Bill payable to fictitious person or order (p 25)
Ch 115. 16. 174 De 600.) is transferred as one payable to Bearer when transferred at all -

A Bill payable to A or Bearer; to Bearer, or to A or order and indorsed in blank, may be transferred either by indorsement or by mere delivery. p 3. 25. 66. Ch 115. 16. 2^d Ray 442. Holt 115. Doug 633. or 611 - Beak 225. 1 Esp 180. 41 210. Com R 311. Stra 557. 10 Al 193. Ryd 89. Dan 452 15-16. 100 R 485.

But a bill payable to A or order, to the order of A or his assigns, or to the Drawer's order is not trans-
- ferable in the first instance except by indorsement
573. Ch 116. 1 Esp 180. Ryd 89. Doug 611 - or 633. 617 or 639.

A Bill payable to A or Bearer is transferable by bare delivery - So of one payable to order if indorsed in blank by payee or any indorsee - but in the latter case the legal interest can not pass at all without -

Bills of Exchange &c

an indorsement in full by payee, ^{afterwards} it can not be negotiated without an indorsement by the Indorsee.

But a blank indorsement by payee, or any other subsequent indorsee renders the bill negotiable by mere delivery - Ch 118. Ray 611 - or 633. 439 - 496. Ryd 89. 205-b. Ray 158. 18th 182. n2 -

(71) No formal words necessary to a valid indorsement suff^t. that the indorser's name be written on the back or any other part - by himself or agent - Ch 116 - 202 418. Ryd 889. Ptra 1103. 1 Sal 126. 8. 30. L^d Ray 443. Com R 311 -

Payee's writing a number on the Bill is not an indorsement - Ch 116. 372 577.

Indorsements may be in blank - in full - or Restrictive - Ch 117.

Indorsement in Blank consists merely in writing the indorser's name with nothing over it - This is the most common mode Ch 117. Ryd 89.

Such an indorsement does not per se transfer the interest in the bill - but it gives Holder the power of constituting himself the assignee by filling it up to himself. Ex "Pay the contents to B" p 15. Ch 117. 1 Sal 126. 8. 130. 12 Mod 192. 244. L^d Ray 443. Dull 275. Ptra 1103 Ch 25. 56. Com R 311 - This he may do at the time of trial -

Holder may either fill the blank with an order

135

Bills of Exchange &c

to pay himself, which constitutes him the indorsee or with a receipt. which shows that he is only agent to the indorser Ry a 95-b. 1 Sal 125. 1 Show 163. 2^o Ray, 871- Or with a power of Atty. 13 E 297

Hence while indorsement remains in blank, ac-
tion may be brot-in indorser's name, cannot be
objected that his interest is transferred as his name (72)
may be struck out. Secus if it is filled up with
an assignment Ch 117-18. Sal 125. 8-30. Bull 275.
2^o Ray 876. Sal 130. 12 Mod 193. 244. 1 Show 163. 2 Str 1103.

Holder is a Witness in such case, in trover for the bill
Ry a 96. 2^o Ray 871- Sal 130. Qu. If proved to be the owner?

A blank indorsement by Payee makes the bill trans-
ferable by mere delivery (p 70. 108) For any one of the
successive holders may fill the blank with an as-
signment to himself making himself the indorsee
Ch 118. Story 633 or 496. 679. or 611- Ry a 19. 205-b.

Nor can its negotiability (the indorsement remain-
ing blank) be restrained by any subsequent in-
dorsement in full transferring the interest. For
the Holder (subsequent) may strike out the latter
indorsement & fill up the former blank to himself
ut supra. p 73-4- Ch 118. to 120. 88. 201- Holt 296. 7 Ry a
205-b. 1 E 218-2. & 22- 4 E 210. Peak 225.

Secus of an indorsement not transferring the in-
terest (as "to pay D for my use". - "on my account".

Bills of Exchange &c

"as my agent" - For the interest remains in the indorser - This form of indorsing prevents it from passing to another. Same rule (seem) tho' the Subseq^t indorsement transfers the interest, provided the prior indorsement is continued blank.)

Is it necessary to strike out if in blank 48ch 210. Is said Ch 188. 210. Long 633. Ryd 206. p 108.

And if payee makes indorsement in full a blank indorsement by indorsee will make it negotiable from him by delivery. Ch 118. 19. Paye 158. 18ch 182 23. (p 73)

(73) But a bill payable to order is not negotiable by mere delivery unless indorsed in blank either by the payee or indorsee named p 70. Ch 116. 7. And 87. Ryd 88-9. 172 DE 606. Long 611 - 633 - 617. or 639. And cannot be negotiated at all unless by an indorsement of some kind by payee -

An indorsement in full is one expressing to whom it is made. Ex. pay the contents to A or order Ch 118. Ryd 89.

Such an indorsement contains in itself a transfer of the legal interest to person named in it (Ch 118. Poth 22-3-4.) unless he appears from the face to be only an agent of the Indorser.

An indorsement in full makes the bill further negotiable in the first instance, only by the Indorsee's indorsement (p 70) tho' if he make a blank indorsement it is afterwards negotiable by mere delivery - & continues so while the indorse^t.

remains in blank 1634 R 182 n2. Chit 118-9. Bayl. 158. (p72)

The negotiability of a Bill originally negotiable can not be restrained even by Payee, but by express words of restriction. The omission of the words "or order" does not restrain its subsequent-negotiability Comy R 311. Chit 119. 120. 1DLR 295-2 Burr 1216. Doy 617 or 637. 1Stra 557.

And if Payee indorses in Blank & it remains so, it can in no way be restrained by a subsequent indorsement-transferring the interest. p73-4. Ch 119.

Restrictive Indorsement.

A restrictive Indorsement is one containing express words restraining the negotiability of the Bill Ex. Pay to A only. - pay to A for my use" "The contents must be credited to A" Doy 617. or 637. Chit 119. 120. Poth pl 168. Mor 72. Beaver pl 219. The effect is to stop the currency of the Bill.

The Payee or Indorsee having the absolute property may thus limit the payment to whomsoever he pleases & thus stop its currency. Ex. Supr "If it is to pay to A for my use" A can not negotiate it even by filling up a prior blank indorsement - for it appears that he has no interest in it Ch 119. 2 Burr 1227 1DLR 299. 1Atk 249. 1Sh 163 - Poth h 89. 90. 4DR 28. 119 Doy 617 or 637.

A transfer it is said cannot be made after acceptance for less than the whole amount remaining due

Bills of Exchange &c

on the Bill - Thus if after the Bill has been accepted the Holder indorses over one half of the interest to D. this will not give D. a right of action vs the Acceptor - Else it would subject the Acceptor to two actions or more - Whereas by his implied contract he intends to subject himself to one only - Ch 120. 2^d Ray 360. Carth 466. 12 Mod 213. Salk 65.

But an indorsement for part would bind the Indorser - for it is his own voluntary act. Hy d 109.

But where a Bill is indorsed for part before acceptance the Acceptor is liable to Indorse - The acceptance in such case implies an engagement to pay the Bill according to the Indorsement. Ch 124. Deauv 266.

The Drawer it seems then can never be subjected by such an indorsement - unless the indorsement was made before the Bill was drawn. which is a very rare case. p 68 - 2^d Ray 360. Salk 65. Carth 466. Hy d 109.

But after payment of part of the amount the Bill may be indorsed for the residue, for then the residue is the whole that is due. is an aggregate sum.

p 69. Ch 120-1- 2 Wils 262. Salk 65. 2^d Ray 360. The Acceptor will be bound for there is no two-fold obligation imposed by the transfer

To complete the transfer the Bill must be delivered to the Assignee. p 37. Ch 121. 61-115.

Bills of Exchange &c

Operation of a Transfer.

The transfer of a Bill by indorsement is similar in legal effect to the making of a new bill & the Indorser is in almost every respect a new Drawer on the original Drawee - the Indorsee becomes the Payee.

(76)

Ch 121 - 63. 99 - 170 - 1. 187. Stia 478. Salk 133. 3 " 38.

2 Show 441 - 95. 501 - 2 Burr 674. 3 Salk 68.

On this principle it is said a promissory note indorsed may be declared upon as a Bill of Exchange - it is essentially a Bill of Exchange - the Indorser being considered as the Drawer - & the Maker of it the Acceptor.

p 96. 10. 102. Ch 121. 170 - 1. 4 JR 149. 6 Mod 29 - 30. Burr 674 - L^d Ray 743. Sal 132 - 3. 3 Sal 68. (En. except as to the Indorser. p 94)

Hence also the obligation to which the indorsement of a promissory note subjects the Indorser in favor of the Indorsee is the same as that of Drawer to Payee.

p 33. Ch 122) Thus if the Maker's name is forged (p 28) or if the note contains no words of transfer, the Indorser is liable to Indorsee 2 Phill 22. Sal 125. 133. Stia 478. L^d Ray 180

And this obligation may be discharged by indorsee's neglect or otherwise, as may that of Drawer to Payee p 46. - 51. 60 - Ch 122 - 4. So by payment made to any other party p 69. 78. Ch 124. 115. 174 DE 89. 170 ib 46.

Transfer by bare delivery (it is said by Chitzy) if made for an antecedent debt, or for a debt created at the time, (as for goods sold) subjects the party ma-

Bills of Exchange &c

(77)

- King it in favor of his immediate assignee to an obligation "similar" to that created by indorsement Ch 122. 3. 54. 200. 7 JR 64. 6th 52. L^d Ray 928. 12 Mod 244 408. 521. Ryd 90-1 or rather it leaves the assignor liable to pay the debt or the price of the goods if drawee fails to pay the Bill (& in. how similar? the delivery of the Bill is not payment, but means of obtaining payment. Another essential difference is that a transfer by indorsement renders the indorser liable to all subsequent bona fide Holders but a transfer by bare delivery subjects the Assignor to liability in favor of the immediate Assignee only. See also Ch 123. 12 Mod. 203. 408. 517. Pal 124. 3rd 68. Holt 298-9 (distinction now exploded Ch 131) -

Exception. if it is expressly agreed at the time that the Assignee shall take the Bill as payment & that he shall abide the risk of non-payment & not otherwise - Ch 123-4. 154. 7 JR 65-6. Holt 121. Cook BL 130 - And a Receipt in full is not Eo. of such agreement - Ch 154.

If then the Assignee does not assume the risk, & the Drawee fails to pay - the Assignee may recover of the Assignor on the consideration of the Transfer Ex - for the goods sold &c - Ch 123. 131. 7 JR 65-6-3 JR 177. Ch 180. L^d Ray 928. Ryd 90-1 - But not on the Bill Ryd 90-1 - The Assignor's name not being upon it - 15 East 7 -

And as the name of the Assignor (in case of a transfer by mere delivery) is not on the Bill, He is not a party to the Instrument Ch 23. 123. 3 JR 760. Hence

Bills of Exchange &c

167

there is no privity of contract between him & any subsequent Assignee - Ergo no action lies w him except by his immediate assignee w^t supra. p 97. 8.
Ch 123. L^d Ray 928. Carth 270. Burr 15-25. 1 Show 130. Esh 461
see 3 JR 174-

Again. The immediate Assignee under such a transfer can not subject him (Assignor) if the transfer was on a discount i.e. by way of sale - without his indorsing it. if there has been no warranty & no misrepresentations. It is then like the sale of any other article - p 33. 66.
Ch 63. 109. 23. 3 JR 757. 1 Esh 447. Hy 290-1 - For in such cases, there is no distinct ground of action as in the case of goods sold, or a previous debt ^{New Rule} Assignor is discharged by payment made by another party, p 67 76. Ch 115. 124. 1 Will 66. 174 Bl 89. (78)

Assignor of a Bill is discharged by paym^t. made by any prior party. (supra)
But a recovery of judg^t. ag^t. one of the parties & committing him on Execution - does not discharge the other parties - They all remain conditionally liable till the Bill is paid -

So if the one taken in Execⁿ. is discharged from prison by the Holder - each party makes distinct contract -

Ch 124. 155. 182. 2 Bl R 1235. 4 JR 825. L^d Ray 690. Salter 574
3 Mod 87. 2 Show 481-94. Selw 872-882.

So if a discharge of one party under an act of insolvency Ch 182. 3 4 JR 185. For the liabilities of the several prior parties to the holder, are in nature of several direct contracts

If the Holder of a Bill transferable by delivery loses it, or is robbed of it, & it comes into the hands of one who is ignorant of the fact

Bill of Exchange &c.

For a good consideration, & before it is due, he may recover vs the prior parties, possession is evidence of property in such cases - p 88. Ch 110. 24.50. Dun 452. 1516. 7DR 427 - L^d Ray 758. Sal 126. 3rd 71 - 9 Nov 47. Doug 611. 633. One of two innocent persons must suffer - Ergo - loser stands the loss - Maxim is that "He by whose act or neglect or even misfortune the 3^d person was enabled to do the wrong by which one of 2 innocent persons must suffer - must bear the loss Ch 125. 2DR 70. But the thief or finder can't recover - he can't hold vs the loser.

If the Holder of such a Bill received it after it became payable, he is liable to be defeated by any equitable defence existing between the prior parties - as before explained p 8. 69. (Ch. 130 -

79)

In such a case if the Assignee of the finder has not given a good consideration for it, but the Drawee not having notice of the loss & pays it - he is not bound to pay the true owner - Ch 125-150-1. 4DR 28. 11th 607.

But if the lost Bill is paid out of the usual course of business to holder. Drawee (Acceptor) may be compelled it seems to pay it again to Loser. Ex Banker's check paid to finder the day before it bore date Ch 125. 18th 40. 151 or before due Ch 151. Pay^t. before due - will not discharge Drawee unless made to the true owner Ch 150-1 - or person legally entitled to the contents -

If a Bill transferable by indorsement only is transferred by a forged indorsement - the Holder acquires no interest in it - Hence the original Holder (ie the true owner)

Bills of Exchange &c.

171

may recover as the Drawee or Acceptor tho' he should have paid it before to the holder under the forged indorsement. p 70. 80 - Ch 225. - b - 51 - 4 MR 28. 1st 617. Story 617 or 637.

By a rule of the Public Mercantile Law. if the Drawee of a foreign bill (accepted or not) loses it when left with him or delivers it over to a wrong person - he must give the Holder (the true) owner of the bill) his promissory note for the amount payable when the bill itself was payable - If he refuses protest must be made for non acceptance & afterwards for non payment. Drawee then becomes liable to an action - Ch 128. Br pl 188. Mar 121 - Bull 271.

No such rule at C Law. as to Ireland Bills Ch 127-8.

In all cases of a Bill lost, if a new one cannot be obtained. (80) protest may be made on a copy p 55. Ch 89. 90. 128. 18 How 163

If Drawee absconds (i.e. after acceptance I suppose*) the Holder may immediately protest the Bill for better security (if refused) & must give notice to the prior parties of the absconding (p 37.) Ch 128-9. L^o Ray 743. Mar 27. 111. 12. Beaves pl 22. 24 - 26-7 - 29. (* For if before acceptance there may be a protest for non acceptance)

This better security is given by a 3^d person's engaging under the protest to be bound as principal for the payment - Ch 129. Comy Merc^{lt} 78. Mar 28. It is therefore in nature of a second acceptance for the honor of the Acceptor.

If the Indorser is subjected by a subsequent party & com-
-pelled to pay - can he in a subsequent action against
prior parties recover the costs of the former suit? Not
on the special count, tho' he may it seems on the
money count. 2 Ph Ev 272. Peters R 350 - as money paid &c
I suppose p 97

If Holder has sued drawee or acceptor & failed to ob-
-tain satisfaction, can he in a subsequent action
as indorser recover the cost of a former suit? It seems
taken for granted in the following authorities that
he can not p 99. 6 Tarrant 464. Ph 55. 7 JR 480. 2 East 458.
2u - how is it as to acceptor? p 56 -

Presentment for Payment.

81.

The general rule is that
the holder must present the Bill to Drawee for pay^t.
at the time when due if the time is appointed, if not with-
-in a reasonable time. And this he is to do whether the
Bill has been accepted or not.* (p 34. 87. 109) Chit 130-1. 202
Porte pl 129. 7 JR 581. 2 Burr 669. 1 Salk 127. Stra 1007. Bull NP.
470. Kyd 120-5. 2 DC Com. 470.

*. The former distinction between giving for a prior
debt or for a debt contracted at the time of giving the
Bill (Ch 131. Kyd 171. Sal 124. Holt 299. 12 Mod 203. 408)
is now exploded Bull 182) -

If he does not thus duly present for paym^t. he loses
all remedy ag^t prior parties. Chit 170-1. 2 Burr 669. 7 JR 581-2
1 Show 155. Kyd 120. Bull 182 -

Bills of Exchange &c.

175

If the Acceptor is dead presentment is to be made to his Exr^s. or Adm^r. if any. if not- at the last dwelling of the deceased Ch 132. - 36-71. Poth on B. p 146. Mar 134 Mol 62. c1. 534. (p 38)

If the Holder is dead his Exce^r. is to present for paym^t. and the Exce^r. it is said, should do it tho' the will is not proved. p 68. Ch 132. Mar 135.

Neglect to present for paym^t. may be excused as neglect to give notice may be (of non acceptance) by invitation: ble carnally &c. - & Neglect to present at all may be excused, when Drawee has had no effects in his hands, or has absconded. (p 36. 52-3-7. 60-) Chit 132-3-6. 202-3.

The Acceptor cannot himself defend on the ground of delay in present^t. for paym^t. (or of an indulgence to any of the other parties) p 49. Ch 134. 133. 156-7. 182p 46. See Bay 235-247.* For he is the first party liable & it is no injury to him.* (Singwall vs Dunster)

It has been said that an action lies vs the acceptor without presentment for pay^t. The action itself being a sufficient demand. Ch 133. Bayf on B. 78nt. 108 na 10. Moa 38.

But this proposition seems to be a very questionable one for as the Inst^t. is a negotiable one he may not know who the holder is, or where to find him to make tender. & this is a suff^t. reason why presentment should be made on negotiable inst^s. in opposition to Rule in regard to Choses

Bills of Exchange &c.

in action. Stra 222 arg^o. 1 Samd 93. Chit-133 Poth pl 140
Mar 96.

In case of foreign Bills if the Course of Exchange has
altered (ie even after acceptance I suppose) the accep-
tor is to pay at the rate of it when the Bill falls due.
p 89. Poth pl 174 -

If the Acceptor engages to pay on or after demand
he may clearly insist on the want of presentment
Ch 134. 2 Show 225 -

If he appoints paym^t. to be made by the person at a
banker's he (as well as the other parties) is *primā fa-*
cie entitled to insist on the want of presentment there
Secus if Banker is proved to have none of his effects p 50.
Ch 134-5. Stra 1195. Bayl 78.

(83). Presentment for payment is to be made by the Holder
or his Agent - *Qui facit per alium, facit per se* -
Ch 134. 18 Ed 2 115. 17 Ed 107. Peak 2 179. 180. L Ray 740. 10 Mod 286
(being competent to give a legal acquittal add Chitty 134 -
ie he must be *huius juris* - if but there is no suff^t. authority for
this see Chit-157. L Ray 742) (p 90 -); it is gen^l. to the contrary
Chit-134. Poth pl 129. not always -

For if he is not at the place named or if there is none
appointed, it is suff^t. (sent) to present at his dwelling, or
at the place appointed whether he is present there or not.
2 Ed 2 512. 27 Ed 2 509 - 12 Mod 241 - Army & Merch^t. 87. 18 Ed 2 4.
Chit-134-5. Mar 104 -

Bills of Exchange &c.

179

If the place appointed is the Holder's own residence there is no need of making an actual demand. if the Acceptor is not there - & it is said that inspecting his books is a suff^t. demand - What necessity for his going thro' this formality? Chit 135 - 2 W Bla 509

If the Acceptor has removed between the time of the drawing of the Bill & that of paym^t. the Holder should inquire for his new residence & make presentment there - p 37. Chit 70. 135-6. Stra 1087. Bayl 58.

But if the Acceptor has absconded (by which is meant fleeing or concealing himself to evade Creditors) no presentment is necessary.

If he has left the Kingdom or State without absconding Presentment at his late residence is sufficient
Ch 131-6. L^d Ray 734. 1824 R 511-12. Tyl 125-7.

No demand on the Drawer is necessary to subject the Indorser - p 60. Ch 136. Stra 441 - L^d Ray 443. 2 Bun 669 - (84)
Nor on a prior indorser to subject a subsequent one
Their liability being as to the Holder Co-ordinate.

If a note is not made payable at a particular place & the maker has a known residence within the State demand must be made there to subject the indorser - & if he has removed out of the State a demand at former place is sufficient 14 John 114.

But tho' the time of paym^t. be appointed in the instrument - it is not strictly payable at the time -

Bills of Exchange &c

there being what are called days of grace. 4th 170. Chit 137. 146. Mar 76. Poth pl 145. & presentment for payment must be on the last day of grace -

When a Bill is payable on sight, or on demand, days of grace are not allowed - because such bills are supposed to be drawn in favor of persons passing from place to place - in order to prevent delay. Chit-137-146 1 Johns C 328. 2 Cairns 343. 2 Cairns R in Cr. 195. 4 Dales, 147. Deane, pl 256. 1 Show 263. Poth pl 12. 172. 198. Hy d 10. 1 Barnard, 303.

As to Bills payable at sight, authorities are contradictory - Poth pl 12. 198. 172. Dea pl 256. 1 Show 183. Hy d 10. Toight of authority is that they will be allowed -

In such cases to be presented to be presented within a reasonable time - p 36-87. Ch 146. Stra 508. 2 Fern 247.

The time of presentment when the Bill is made payable at a particular time after date, after sight, or at usance depends on the appointment made in this respect in the instrument - Ch 136. In these cases days of grace are allowed 4th 170. Mar 76. Poth pl 145. Ch 143 -

If a Bill is drawn at a place using one chronologic-
cal style & payable on a day certain at a place
using another - the time of paym^t. is ascertained
by the style of the latter place p 30. Ch 138. 59. 60. 64.
83. Poth pl 155. 251. Mar 102 (Hy d 8 contra) Deane, pl 251

If drawn payable at a certain time after date, or after sight or at usance, the day of the date in the first & last cases & of presentment in the other is excluded. In other words - If payable such a time after date

or at least the day of date & that of presentment - are excluded in the computation of time.

And if payable so many days after sight the day of presentment is excluded. 2^d Ray 280. Chit-138. 143

6 TR 212. Beaves pl 250 (contra Fortescue 370 not-law)

Schw. 1591. Poole pl 13.15.

The civil rule of the Com. Law is different - in other cases, as bonds, leases, &c (2 Vent-208. 10. 3 TR 623. Pow 448. see Corp 714. When time is to be computed

from "date" of an Inst. - Secus if from the "day" of the date in this latter case the day is excluded.

But this distinction has been neglected to effect the apparent intention. For importance of this distinction see Corp. 417. Powell on Pow. 448.

If a bill payable at a time fixed after date has no date, the time is computed from the day on which it is issued. exclusively - Ch 43. or 143. Bayl 68. 2^d Raym. 1076. 4 TR 337. Comy Reg "Fait" 13. Doe Ab Lease 11.

Days of grace allowed to the Drawee are probably so called because the indulgence was originally granted - Ch 139. tho' it is now a matter of right - 4 TR 151-2. Chit 139-143. 1 Esp R 59. 261 - Hyd 10-11-121-5

The number of days of grace is different in diff^t places. In Eng^d & this country it is three - In some places of Europe 5 or 6 - They are allowed by public Law of Merchants. Chit 130. Beaves pl 260. Hyd 9-10 Mar 96-

Bills of Exchange or

(86)

Hence if by the terms of the Bill it is payable on Monday the time of payment is extended by the days of grace till Thursday Ch 130. or 140.

And the time of presentment is the last of the days of grace - A presentment before or after is a mere nullity, & will not hold a prior parties tho' notice has been given Ch 141 - 1 & Ch 261 -

Days of grace are computed according to the custom of the place where the Bill is payable Chit-140.

In Eng? & here Sundays & holy days are included in the usual computation of time Chit-140 & 1. Polk pl 139

Hence if the last day of grace is Sunday (or in Eng? a great Holy day as Christmas) Demand should be made on the 2 day if not then paid the Bill is dishonored - Ch 121. 2 Ray 743. Str 829. Hy 120.

On Promissory Notes in Eng? Days of grace are not allowed - in Count. they are - (Count. R 329)

Usance is the usual or customary time appointed by usage for the paym^t. of foreign Bills, is between the countries between which they are drawn. Ch 141 -

Foreign Bills are usually drawn in this way at one or more usances.

The length of the usance is diff^t in diff^t countries Hy 84 - "Contracts" 123 - Chit-141 - say 30 days -

Bills of Exchange &c.

136

If a Bill is payable at a month or months after date or sight - the computation is by calendar not lunar months. Ch 143. Deane pl 253. Mor 74 90. Hy 26. See as to other instruments in gen' &

Ch 142. 2 Bl 141. 6 Tr 224. 2 East 333. If a bill is computed at a fixed time after sight, the time is computed from the day of acceptance (or protest for non acceptance) p 35. Clit 144. 6 Tr 212. Com Merch 7. (87)

Where no certain time of payment is expressed presentment must be within a reasonable time - Ex -

When payable on demand or on sight - p 36. 58. 81. Ch 146. 134-7. Stra 415. 508. 910. 1175. 1248. 10 LR 1. 108. Hy 245. 2. 74 Bl 565. 2 Hy 928. 17 R 108. (ante 36. 58. as to reasonable time in presenting & giving notice)

The day of presentment being ascertained, presentment must be within a reasonable time before the expiration of the day & in the usual hours of business p 34. 88. Ch 148. 69. Bayl 59. 67. Hy 2125.

On presentment for payment the Bill should not be left with drawee unless paid - If it is. presentment is not considered as made till the money is called for Ch 149. Stra 416. 910.

Payment should be made in gen' only to the owner of the Bill or his agent - Ergo if made to payee after he has transferred it - it will not avail the party paying p 70. Ch 149. Polk pl 104. (88)

As to Bills transferable by delivery & act - see p 78.

Bills of Exchange &c

If payable to A or order, for the use of B - payment - should be made to A or his order - p 68. 79. Chit 112. 149
 Ryd 107-8. 2 Vent 310. Carth 5-

Gen'l rule said to be that when money is payable on a day certain, the party bound is allowed till the last moment - of the day to pay it in -

See "Assumpsit" Ch 153-96-7. 1 Saund 287. 4 TR 173 -
 Ryd 121 - 12th R 189.

This does not affect the rule in regard to Presentment - the Acceptor is allowed the indulgence

Seems as to foreign Bills for as the protest is to be made on the last day of grace the notice to be sent if possible on that day - the holder may insist on payment - within the hours of business - p 36-58.

(Some confusion in Books) 4 TR 174. Ryd 121. Chit - 153 96-7.

But in the case of Inland Bills (as the reason of the last rule does not apply to them) it seems that the acceptor is indulged till the last moment of the day of payment - p 90-1 - Chit 147 - 153. 162. 4 TR 170. Bayl 67. 10th pl 140. 4 TR 174 - But this is qu. Ryd 121 - 4 TR 474 -

If a Bill drawn here is payable in a foreign coin - try & in foreign coin - the value of which is at - the words reduced, it is to be paid according to the value at the time of drawing p 82. Ch 154. Skin 272.

If the Holder compounds with the Acceptor without the consent of the other parties, they are discharged - For he deprives them of their remedy as acceptor.

Ch 155. 183. Cook DL 160. tho' they should be compelled to pay the residue of the amount - A Holder has discharged him whose liability is primary he discharges those whose liability is secondary.

Besides he cannot claim beyond what he has agreed to accept - Secus if he only receives a dividend. the acceptor being a bankrupt - advantageous to the other parties, but he must give due notice of non-payment. Ch 155.

Said that if Holder receives of Acceptor less than the whole amount due in part satisfaction of demand without assent of prior parties - they are discharged - Ch 156. 2^o Ray 744. Ma 745. Bull 273. Because it shows an election to have the money of the acceptor.

But see. The rule does not suppose the Holder to discharge other parties - the other parties are not at all injured - it is altogether in their favor. Not Law. See also Bull 271-3-5. Ma 88. 85. 6. (p 49. 82) Chit 156-160 Vid Cook Bankr. L. 167.

Said to be doubtful whether a party bound can insist on a Receipt as a condition of pay^t. p 83. Chit 134. (90) 57. Peak 174-80. 2^o Ray 742. 274 DL 31-10 Oct 192. For 145 No good reason for this doubt - A Creditor is never bound at Law to give a Receipt - 274 DL 31- Peak 179-180. Fortesque 145.

A Gen^l receipt indorsed "as rec^d. paym^t. in full" not-

Bills of Exchange &c

namely person is *prima facie* evidence that the payment was made by the Acceptor - Ergo. if paid by Drawer or Indorser the Acceptor should be for his security in his name. p 110. Chit 157. 8. 209. Peak 25.

Monday June 30th 1831.

If payment is refused the Holder must immediately protest the Bill if foreign & whether foreign or inland give notice to the parties to whom he intends to resort for payment Ch 158. 202. If not he discharges them. (The first U.S. Law Journal is contra But why is presentment itself necessary to subject the prior parties?) -

In certain cases under St of 8 & 9 Wm 3^d. Inland Bills may be protested for the purpose of recovering interest & charges. p 56. Ch 160 - 1 -

For the rule relating to giving of notice see ante as to notice in the case of non-acceptance p 44. 46 - 51. 59. 60 - For form of protest see Chit - 159.

If part only is paid, the Bill is to be protested if foreign for the residue, & notice given in all cases except when evaded, or excused as in the case of non-acceptance (whether foreign or inland) - Chit 156 - 160 St 68. 68-7.

The effect of protesting an inland bill under the Stat 9 & 10 of Wm III. is only to give the Holder a cumulative remedy. Ergo never necessary to protest such a Bill, notice withen-

1, 143

911

protest is suff^t. Chit 161-2. 2^d Ray 992. Stra 910. 2 DL 469.

Protest for non payment of a foreign bill must be made on the day of refusal & notice should be sent by the earliest ordinary conveyance. p 55. 88. Chit 126. 45-6-7 4 GR 174. 1st 168. 2^d Ray 743. Stra 829. Man 97. 2 DL 565. Rye 126.

But in case of an Inland Bill it seems that notice cannot be required as of course till the day following, as the acceptor is allowed the whole of the former day for payment. p 88. Chit 162-153. 4 GR 170. 1st 168-9.

And where Bill is Inland notice should be regularly given or sent (p 58) on the day following that of non payment, if there is a regular conveyance on that day, or the prior parties will in general be discharged. Chit 162.3. 1 GR 168.9. Rye 515. 2 DL 565.

When a Bill (foreign or Inland) is dishonored, payment *supra* protest* may be made for the honor of the drawer or of any subsequent party - for the original drawee may have accepted & afterwards refused payment - or he may have refused in first instance - Deane 456. Rye 152. Chit 163-115. Selw 891-2 Deane pl 50. Man 128. (p 62)

* Is a protest necessary in the case of an inland Bill? Chit 103-113 - It is not so for the purpose of enabling the holder to recover of the prior parties, tho it seems to be to recover of person for whose honor &c

But the drawer himself after having made a simple

Bills of Exchange &c

(92)

Acceptance cannot pay for the honor of an Indorser being as to him already bound by his previous acceptance Ch 63. Deau Pl 57 - but as between himself & the Drawer he may shew that the acceptance was without consideration

But if he has had no effects of the Drawer he may after simple acceptance pay for his honor & thus acquire a remedy on the Bill ag^t him^s (p 62. 5-98. Hyd 153-5. Powell on C 139. 15 Pl 269. Deau 458. 1 Esp R 113. Ch 105. 15. 22. 63-4 -

In this case he would have a remedy as Drawer without a protest (p 50.) tho' not upon the Bill - The effect of the protest is to rebut the presumption of his having effects. to shift the burden of proof - & give a remedy on the Bill -

Generally Payment for the honor of a party should not be made till after the protest of the Bill for non payment - Without such protest payee acquires no right to recover on the Bill as any one Ch 105. 63 - Deau Pl 53. Mar 128.

Tho' if the Drawee having no effects of Drawer pays without protest he may recover against him as for money paid. p 50. 62. Ch 113. 191 - 203. 5. Hyd 103 - 5 - 6 -

But if the Acceptor for the honor of Drawer or Indorser has rec^d. his approbation of the acceptance he may safely pay without protest for non paym^t. for such approbation implies an admission that he had no effects Ch 104. Deau Pl 48. Hyd 154. Deau. 458.

These latter rules are predicated of Payment by Drawer.

But a Stranger as he may accept may also pay for the honor of a prior party. *Supra* protest.

But he never does it except under protest. for without a protest he cannot subject any party. it is else a mere gratuity. A man can't make another his involuntary debtor. *Chit* 164. If *supra* protest he has his remedy on the Bill as the party for whose honor &c. & the prior parties. 1263. 65-98. *Ch* 108.

Promissory Notes in nature of a Bill of Exchange.

A promissory Note made by Stat. Laws negotiable are considered as Inland Bills of Exchange - tho' in form they are different.

A Promissory Note is a direct engagement in writing to pay a sum of money to a person named in it, or his order, or to Bearer. *Ryd* 18. 35. *Ch* 165. 202467 whereas a Bill of Exchange is directed to a 3rd person. It is in nature of a Bill of Exchange drawn by maker on himself *Ch* 165.

Held to be not negotiable at Com. Law. tho' expressed to be payable to order or bearer. *Ch* 115-6.

Not that Promisor does not intend to make it negotiable but because the gen'l rules of C.L. forbid choses in action being negotiable. They are regarded not as instruments on which an action will lie but merely as written evidence of a parol promise to pay & the writing in such a case is never declared upon. Indeed such a writing is a promise to pay to A at Com. L. the words

Bills of Exchange

Order or bearer have no effect. Kyd 18. Chit 156.
Salk 129. 2^o R. 757. 759. bills 29-30. 3 Burr 1520. 472 157

But Notes payable to order or Bearer are now by-
Stat 3 & 4 Anne put upon the same footing as In-
land Bills of Exchange. i.e. they are converted
into instruments & made negotiable. (Stat made
perpetual by 7 Anne) Ch 169. Kyd 19 & (p 4)

(An Instrument is a writing which itself creates a
right of action or discharges one & may in Pleading
be declared upon -)

In U.S. generally notes containing operative words
of transfer are by Stat made negotiable -

Hence rules relating to Inland Bills of Exchange
are in general applicable to Promissory Notes pay-
able to order or bearer. They are treated in every
particular except in presentment for acceptance
as the same. Chit 169.

Now settled tho' formerly holden contra, that
days of grace are to be allowed on such notes
as on bills of Exchange - p 86 - Ch 169. 472 152
1^o 167. Kyd 121-5. Bull 274 - Henry 61-3* 1 Conn't R
329 - 2 R 478. Kyd 34-5. i.e. when payable such
a time after date - & - if at sight - or on demand
it is op - as in regard to Bills of Exchange -
* 20 and is the only word -

Bills of Exchange &c.

202

A promissory Note when indorsed precisely resembles a Bill of Exchange except in its mere terms or phraseology. the Indorser is the Drawer. indorsee the Payee; (94) & the Maker the Acceptor. Ch 121-70. 87-8. Burr 876. Ky 34-5-

Hence it is said that a Promissory Note indorsed may be declared on (co nomine) as a Bill of Exchange. p 10. 76. Chit 121-171. 45 R 149. Burr 29. 30. 2^d Ray 743. 1 Salk 132-3. 2^d. except as ag^t the Indorser. But as the Law Merchant is a most liberal code there appears to be very little question but that it may be declared upon as a Bill of Exchange as all parties liable.

Bank notes are promissory notes - But they owe their origin to particular Stat incorporating the Banks In Eng^d 6th 5th Wm III. 8 & 9 St. Chit 171-2. Sten 415. 554. Holt 14. 1 Salk 283-

Not intended to be negotiable till the Stat. of Anne Ch. 170-7 b Burr 293. 2^d Ray 180. 3 Lev 299.

But Bank Notes are for most practical purposes treated not as securities or evidences of debt - (unless in action) but as Cash (being payable on demand) whether payable to order or bearer p 10 - Ch 11. 7. 2^d Ray 744. Berry 135. 75 R 428. Burr 1517-9-

In gen^l transferable by bare delivery but if indorsed they may be declared on as Bills of Exchange as indorser. Ch 171 - 2^d Ray 743. 1 Salk 132-3 - 45 R 149-

In this respect they are governed by the same rules as Bills

Bills of Exchange &c

of Exchange. Ch 171 - 18th 172.

Bank notes will pass in a bill under the description of money or cash. But if not paid as presented must to the Bank, it is immediately liable to an action. Holder may then treat it as a check in action - 10 Burr 457. 35 R 554. 60 335. Chit 172.

But an action for money had & rec^d. will not lie as the finder of them, unless he has received money for them. for they are not in legal strictness money. if he refuses to restore he may be subjected in Trover - p 23. Ch 172. 6th 99 - 20 R 828. 1269. 684 - 5 Burr 2589. 38 Ast 369 - Com 197 17 R 239.

For are Bank Notes, strictly a tender - if objected to at the time as not being money. but if Creditor does not object to them the tender is good. 37 R 554 - 1 Eq Cases 318. 2 Dorr & Dorr 528. Story 662. 24th Chit 172 - Burr 457. See "Tender" -

(96) - No particular form of words are essential to a promissory note of any kind. If it contains a promise to pay money it is sufficient p 19 Ch 173.
And if made payable to order it is negotiable. tho' at this day the term promissory note signifies a negotiable note -

Hence a Note promising to account with A or or.

= due for a certain sum operates as a promissory note Ch 173. 8 Mod 362. Stra 629. 786. L^d Ray 1396. 2 Alt 32 (ante 19)

But the mere written acknowledgment of a debt without words amounting to a promise will not operate as a promissory note. Ex the memorandum "I.O. U." is not considered as a promise to pay but prima facie evidence of a debt. & may be given in evidence in Assumpsit - Ch 173. 18 Cr 446.

(This form was formerly used in Eng^d. to evade the stamp duties. it is now considered as a common memorandum -)

Requisites to a good Promissory Note.

They are the same as those to a Bill of Exchange & for the same reasons. It must be payable at all events, not on a contingency & in money only, not in specific articles, not part in money & part in chattels - p 20. 29. Ch 32. 4. 173. 4 Mod 242. 8. 363. 1 Burr 323 Stra 1151 1271. Comb 227. 4 JR 149. 7 do 243. 733. 5 JR 458. Dalt 272. 2 Bl R 782. Hy a 58.

If destitute of these requisites not negotiable, tho' laid that it may be declared upon as a note between the original parties. See - 7 JR 242. Chit 48. 33 -

By the Stat of Count. no action can be brought on a negotiable promissory note but within 6 years after the right of action accrues (so in N.Y.) But

Bills of Exchange &c

the time the Maker is out of the state is not computed as a part.

Remedies on a Bill or Note. (Assumpsit.)

97' Assumpsit is the usual action on bills & notes - said to be the only remedy on the instrument when there is no privity between the parties - If there is privity Debt will also lie. Hence Debt will not lie between the Drawer & Indorsee in - inasmuch as Ind. Ct. Aff: is founded on legal indebtedness - Ch 179.

The Holder may in genl maintain Assumpsit as any of the prior parties - severally - as on Bills of Exchange 1st Resort to Maker if dishonored may sue any one alone - or each of them in a several action 4 DR 41. Chit 179.

Thus this action lies for Payee vs Acceptor or Drawer for indorsee vs Acceptor, Drawer & all prior indorsers.

But the Assignee by Delivery can maintain no action as any person whose name is not on the Bill - But he may recover as the Assignor (the person from whom he received it on the consideration, tho' not on the Instrument - An action on the Inst^t will lie only as some one of those whose name is upon the Inst^t. 15 East 7. 7 DR 64. 2 Ray 928. 12 Mod 244. 408. 521 Plow 515-510. Chit 122-3. 180. (ante 77) See ante as to the obligations & rights of the several parties -

But the prior parties can not be joined for each has an

Bills of Exchange or

210

independent liability.

So too if the Drawer after accepting refuses to pay, the Drawer (if he has been compelled to pay) may maintain an action on him on the Bill - except -
Chit. 180 (Clinty says action will lie for non acceptance totally incorrect - Chit. 191-203) part III -

And in fact any party having been compelled to pay may maintain the action on any or each severally of the prior parties - on the Bill - 7 DA 571, Chit. 180, ante 80.

When a Bill or note is transferred without indorsement for goods to the Holder may sue his immediate indorsee on Com. money count.

And so if the Acceptor for the accommodation* of the Drawer has been obliged to pay the Bill (as he may be) he may recover on the Drawer on a Com. Count. unless it was for the honor of the Bill. if so - he may recover on the Bill - ante 50-1. 62. 92. Chit. 180. 190. 1203 - Ryd 156. 196. 172 269.

(98)

/* the term "for accommodation" signifies that the party draws, accepts or indorses without being under any legal obligation to the other - but merely to lend his name in order to enable the party to raise money thro' his credit /*

So it lies for a stranger having paid supra pro -
- that on the party for whose honor he & all prior

Bills of Exchange &c

parties. Ch 180. Ryd 196. Ante 62. 5-92-

In part the action will not lie on the Bill vs one who became a party after the Holder. Ex A indorses to B & B indorses back to A. If A could recover vs B, B could afterwards recover vs A. Ch 181 452 470. But this rule cannot hold in favor of acceptor or any of the parties prior to A.

The action lies not vs the party from whom the Plff immediately received the Bill unless he paid a valuable consideration for it - Ante 8. 77. Clit 9. 51-81- 181- 155. 752 121- 350. 571- Long 514. 1202 185. 10 Mod 36. 1000 & Pae 651- (2 DC contra 446 - see ante 8 & 2a) But consideration is examinable only as between the parties in immediate priority - want of consideration will not affect a subsequent bona fide Holder. 2 Phil 22. n l 13 Johns 52. 7 361- 15 44. Ryd 155.

If the Holder makes the Acceptor his executor & dies the right of action vs all the prior parties is extinguished Ante 50. Ch 131 - Potts 191 - 1 Roll 922 - Plowd 184- 640 - Sal 299. 2 DC 581- 12 - 39-18. For the primary liability being discharged the secondary must be - It is forgiving him the debt - a release Besides it destroys the claims of the other parties vs the acceptor.

(99)

Holder may at the same time commence an action vs each of the parties who are liable on the Bill - but satisfaction by one will discharge the others i.e. of all except the Costs.

Bills of Exchange or

But - alias if they do not pay the costs in their respective suits Chit 181-2-193 - Poth. h 160. 1206 46-3 Mod & b. 2 Show 441-494 - Skin 225. 4 D R 691 - Fly 2112-6 198. But only one satisfaction can be had -

And if in an action vs the Drawer or indorser he pays the amount of the Bill & costs of that action, Court will stay further proceedings vs him & will not require him to pay costs in the other suits - 4 D R 691 - Stra 515. Chit 96. (Contia D R 749. & Fly 2198 not-Caw) -

But this rule admits of a diversity in one party: - when case - If the action is brought vs the Acceptor & other parties & the Acceptor pays the whole amount & his own costs - he can be compelled to pay the costs of the other suits - for he is the party 1st liable & it is his fault - that any of the others are sued - 4 D R 691 - Stra 515. Chit 193 - But this Rule does not hold between the other parties - tho' among them there are prior liabilities

The Holder having recovered judgment vs all - may have Execution vs the persons of all - but he can have but one fieri facias - i.e. at the same time - while that remains operative - for he can have but one satisfaction - But if the first is returned nulla bona, he may then have a 2^d fi: fa: ag^t another - Stra 515. Chit 183 -

If after judgment vs two or more satisfaction is had from one, the remedy of the other is by audita querela.

Bills of Exchange &c

The Declaration -

The action may in fact be founded either on the Bill or on the consideration of it - the consideration which the Plff (the Holder) gives for it. Ex goods sold - Money paid or Chit 184. 233. 248. Burr 223. 15-16. 2611 - Corp 132. Ryd 58. 177. 197. 372 174

In the latter case the Plff declares on the common counts - Ex for money had & rec^d. Paid. Laid out on Goods sold, labor done. Just 103. 111 - Ch 184. 372 174. Sal 24. For forms see Chit 232. 248. Counts of both kinds are usually joined -

Formerly it was usual to allege the customs of Merchants in declaring on Bills of Exchange. Now so much it is unnecessary even to refer to it. Ch 184. 57. 234. L^d Ray 21. 175. 88. 1542. Carth 83. 267. 270. Ryd 177 9. 80. 3 Med 226.

In declaring on promissory notes it is usual to allege that the Deft became liable by virtue of the Stat of Anne (Ch 185. 246) that the declaration may not be supposed to be founded on the count -

I G. sees no necessity for this form, for the judges are bound to notice it ex officio -

It is not necessary in a count upon the instrument to allege a consideration it being implied (ante 7. Ch 51.) prima facie by the instrument - Ch 9. 51. 115. 6. 185. 9 Ryd 48. DC 445. 11 487. L^d Ray 758.

It is not necessary to make perfect of the instrument - the instrument not being specially tho' having some of its qualities - Ch 185. 15ia 386. 47a 338. In practice however the Ct. will compel Plff to give a copy of the Inst^t. to Def^t.

If the Bill or note can not take effect according to its form - it should be declared on according to its legal operation. Ex payable to fictitious payee or or:
= dec, declared upon as payable to bearer (ante 25)
(106) Ch 48. 5-8. 185-6-7 - Long 167. Corp Dec. 37a 174⁸
282. 481. (335) 174 Dec 313. 516-2. 20th 22 -

To payee of a note be made payable to his own (102)
order may declare on it as made payable to him
= self - Ante 25. Ch 187. 2 Shaw 8. Tlyd 108. Carth 403

Not necessary tho' usual in actions on bills to allege a promise to pay describing the Bill - how the Plff & Def^t became parties to it, & showing Def^t's liability are sufficient without averring the promise -
Ch 186-7. 236. Carth 509. Sal 128. 24 - Hyd 196. L^d Ray 538. 10 Cent - 153 -

The Law raises the promise on the custom of Merch^{ts}. or as has been said drawing a bill is equivalent to an express promise - (It).

Note. I G. says this Rule is an anomaly, it is not only usual but necessary in all other cases. This is a departure from the principles of pleading -

"By procuration" not necessary (tho' usual to state the fact) for "Qui facit per alium, facit per se".

Bills of Exchange on

Ch 186. 274 DC 313. 87R 659.

An Indorsee may declare as his immediate In-
 -dorsee as on a Bill of Exchange, drawn by Dept
 + payable to himself ante 76. Chit-187-8. 121-130
 47R 149. Burr 674. 2^d Ray 743. (He may not
 the subsequent Holder as the same if the in-
 -dorsement is in blank?) But this is not usual
 The Bill & the Indorsement are generally stated
 as they are in fact.

In an action as drawer or indorser. Plff must
 in general allege presentment for pay^t. (as the
 case may be) presentment for acceptance & drawer
 neglect or refusal & also that regular notice was
 given - unless he shows that notice was un-
 -necessary. Ante 51-2-3. Post 199. Chit-188-9-
 202-54. 65. 158. 84. Long 658. 5 Burr 2670. 17R 712
 1 Vent 45. altho the declaration is bad after ver-
 -dict Long 658.

(103) In the Com. Courts the instrument (is between
 the parties post 105) may be advanced as mere
 evidence of the Dept's indebtedness - which Ev. the
 dept is at liberty to rebut by opposing testimony -
 (p 104. 104) Ch 173-189-92. 18 R 424 2 Stw 725.
 174 DC 602. The Bill being only prima facie ev-
 -idence when thus used -

These are frequently joined with a count on the
 Bill to 18 abundantia cautela Chit 189.

Or they may be used alone & supply the place of a count on the Instrument - this is seldom done unless the Instrument is defective. Ch 189. 203-4. 37R 174. 2 Shaw 501 - for it is abandoning better for poorer evidence.

In these counts also the Poff may go into evidence of the consideration & thus prove his case by parol Ch 189. 37R 174. 71 241. 18R 245. 18R 58. Bull 137. 18R 719. For the Bill does not merge the original debt - Ch 189. 90. 18R 245.

In certain cases (ante 103) the instrument may (104) be given in evidence in support of the money counts. In an action by the Payee or the Drawee of a Bill or maker of the note; it being evidence of the money lent - Ch 190. 18R 725. Bayl 95. 2^o Bayl 758. 3 Burr 15-16-25. 67R 123-5. &c prima facie evidence - Ch 191 -

So in an action by Indorsee or his immediate indorser - Ch 190. Bayl 90 - &c. Burr 373 -

Said that a Bill or note is prima facie evidence of money paid by the Holder to Drawee or Maker Ch 131 - Bayl 95.

But it is said to be prima facie Evidence of money had & rec^d. by Acceptor to the use of the Holder. The former being presumed to have Drawee's money. Ch 191 - Bayl 96 - 174 DC 239. 2u 174 DC 202.)

Bills of Exchange &c

It is said that a Bill accepted is Ev. of money paid by the Holder to the use of the Acceptor denied by Eyre Ch 9. 174 DC 602 - Daye 95. Ch 191 No actual privity between them -

Qu. - Can Drawer - after being obliged to pay recover vs the Acceptor - Except in an action on the Bill? Said that he can not - (7th 572. Ch 191. &c that he can not in Ev. support a money count by the Bill - Is it not money paid to the use of Acceptor?

105) If Drawer not having effect of Drawer's pay the Bill (even without protest) it is evidence of money paid - laid out &c for the use of Drawer. He may recover it in an action so paid &c Ante 57-98. Ch 191 - 174 269. 7th 576. Ch 205. 18th 332 -

The Drawer in the case if it was an acceptance without protest takes the "onus probandi" -

Therefore he must prove that he was indebted to Drawer for the presumption arising from paym^t. without protest is that he was Ante 57-98.

A Bill or note is prima facie evidence of money had & rec^d. by Drawer or Maker to the use of Holder Ch 191 - Sal 283. Daye 95. Vin At Ev. AD 31. Burr 15-16 - 12 Ev. of money rec^d. from Payee to the use of him whom Payee should appoint to receive it -

Bills of Exchange &c -

And it is held that acceptance is evidence of an account stated by the Acceptor with the Holder.
Chit 191-2. 174 DE 239. 12 prima facie Ev.

That is according to this Rule - acceptance is equivalent to an account current rendered -

Evidence in Assumpsit on Bills -

(106)

The Evidence is governed by the Pleas: -
- in all other cases - necessary to prove what is put in issue & no more (Ch 199) i.e. whatever is essential to the right of action & this is to be collected from former rules -

Under the first issue Plff must prove every material allegation - 2 Ch 200.

Hence he must prove that the Bill was made as stated or that its legal operation was so, & that Htpt became party to it as alleged (ante 101)
Ch 185. 611-200. 182p 14-15. Corp Soc. Henry 667. 370-178. 335. 643-4-471-611-10207-

As to Acceptor it must be proved that he accepted verbally or in writing (ante "acceptance" Ch 200) and if accepted by Agent that he was legally authorized ante 39 Ch 200-24-207. 182p 14-15. If the acceptance was conditional that the event on which it had taken place ante 45. It is Ch - Pica 212. Corp 571-

Confession by Drawer of his having accepted is

Bills of Exchange &c

Suff^t evidence of that fact - as in him. Ch 208.
12 Mod 309 - 18 ex 15. Confession of his signature is
good in him -

Against drawer or indorser Deft's hand writing
or that of his agent - must in some way be proved
ante 29. Ch 200 - 9 - 556. 2^d Ray 13. 96 - 609 - 641 - 1051 -
8 Mod 307 - 18 ex 135 - 143 - May be proved by Deft's
confession (see last rule) -

Against a person transferring by delivery only
proof is necessary that he delivered the Bill to Plff
ante 66 - 97. Post 114 - Ch 200 - 115 - 6 - 122 - 154 - 6 - 108.
209 - 750 - 64 - 652 - 2^d Ray 928. Tyl 90 - 1 - 12 Mod
244 - 408 - 521 - (Tho' in gen'l the mere produc-
- tion of the Instrument is suff^t evidence of the
fact - Ch 209) In - unless Deft is named in the
instrument as one a Bill payable to A or Bearer)

And under suspicious circumstances that the Plff
(not being original Payee) or some intermediate
Holder rec^d. it bona fide, & for a valuable con-
- sideration - Peak Ev. 220. Bill lost ante 7 -
Ch 201 - 9 - 51 - 124 - Long 611 -

And between Indorser & Acceptor, the hand writing
of the first Indorser at least must in gen'l be
proved (even tho' accepted after sight of the Indorse-
- ment - Otherwise no title is deduced to Plff -
Post 114 - Ch 116 - 18. 201 - 9 - Peak 20 - 225 - 18 ex 180
150 - 654 - 31175 - Long 630 - 653 - Peak Ev 220 -
So as to the Drawer Ch 209 -

And if first indorsement is in full (the Bill being (108)
payable to order - a subsequent Holder must-
prove also the indorsee's indorsement - as well in
an action vs Acceptor as vs the party indorsing -
Ch 210 - 15 - 7 Mod 87 - 174 DC 666 - Otherwise no title ap-
- pears in the Plff -

To doubtless as vs Drawer, or first indorser in
last case -

But if first indorsement^t is in blank it is not ne-
- cessary to prove any subsequent indorsement -
as vs the Acceptor for the first may be filled
up to Holder - But in this case it is said
the subsequent one's must be erased (2nd. If
they are in blank Peak Ev. 220) Ante 67 - 72 -
Chit 118. 201 - Story 633 - or 617 - Holt 296 - Ryd 206
Peak R 225 - 18th 180 -

So if payee is fictitious no indorsement^t need be
proved as vs those parties who knew of the fact
at the time of becoming parties - Ante 25 - Chit
161 - 2 - 187 - 375 - 178. 182 - 481 - 174 DC 313 - 386 - 569 -
274 DC 194 - 228 - Ryd 206 &c -

When Drawer or Indorser is left Plff must
prove due diligence to obtain the money from
Acceptor or Drawee - Seems no breach of Con-
- tract on this part - Ante 202 - Ch 188. 202 -
Cm R 579 - Story 658. 5 Burr 2670. 1702 712 -
1702 45 -

Bills of Exchange &c

Hence Plff must in some cases prove presentment for acceptance ante 35. post 115. Ch 87. 202 210 - Hyd 107. 2^d Tra 107 1st DE 565 - 75R 581 - 2 Burr 669 -

And in civil presentment for payment - ante 81 - post 115. Ch 202. 210 - 130 - Sal 127. 20E 420 -

And in both cases in civil notice of refusal. Chit 81 158. 202 - 12 cut 45 - 5 Burr 2670. 15R 712 - ante 103 - post 116 -

In case of foreign bills (when notice is necessary) a protest for non acceptance or non payment must be proved. This is a necessary part of the notice (ante 54) Ch 90. 159. 202. 210. Hyd 136. 2^d Ray 993 - 4 Mod 8. 27R 713. 5th 239 - 1 Sal 231 -

But the protest proves itself - a production of it is suff^t. ante 55 - Chit 210. Bull 270. 12 Mod 345 - 10 R 46. Holt 297. Chit 91. Peak 6074 n. 2 Roll 346 - Exceptions to these rules (sup) when Drawer has no effects of Drawers & in certain other cases. See ante Presentment for acceptance & for pay^t. Chit 68 - 87 - 107. 132. 202 - 3 -

(110)

In actions vs Indorser not necessary to prove a demand upon drawer ante 60 - Ch 99. 202 Tra 441 - Crank 579 - 1 Esp 334 n. - Formerly thought otherwise Ch 99. Sal 131 - 3 - 2^d Ray 443 - For the liability is co-ordinate as to the Holder -

Bills of Exchange &c.

234

If Indorsee having paid a Bill for acceptor, drawer or a prior Indorser, he must prove that the Bill was returned to him & that he paid it. ante 90 - Chit-203-9. 2^d Ray 742.3 - Otherwise he shows no title - Drawer must prove the same facts when he sues the acceptor.

If Acceptor of an accommodation Bill sues drawer he must prove in addition to Deflt's hand: - writing - Paym^t. by himself, or something equivalent, as being imprisoned under an Execution, & that he had no effects of Drawer's - ante 59 - 105. 11 - Chit-203-5-91 - 103 - Ky 2156 - 3701b 18.

If Drawer having been obliged to pay the Bill (111) sues acceptor he must prove acceptance, demand of paym^t. upon acceptor & refusal - the return of the Bill & paym^t. by himself ante 97 - Chit-203 - 10 Mod 367 - 1201b 185

But he need not prove that he had effects in Acceptor's hands. the onus probandi is on the acceptor - ante 57 - 111 - Chit-203-87 - 132-3 - 170 406-9 - 34 182 - 274 Ala 112 - 12 the acceptance being according to the tenor.

If Plff can not support his count on the Bill he may resort to the Common Counts which are founded on the consideration of it Chit 184-9 - 204 - Kyd 197. 58. 117 - 177. 370 174. Burr 151b

Bills of Exchange &c

Rule in *Watson vs Shelly* (15th 296 - Ch 204. Peak Ex. 134) that indorser tho' not interested is not a competent witness to invalidate the bill -

Ex. Indorser offered to prove *Usury* - rejected - Overruled in *Ens.* 7th 601 - 18th 332. 10. 85 248 or 298. 196 - Peak & L. 52 - 224 - (Contra Peak & 40 - 18th 176 - 1 May 17 - 301 - 1 Cairns 258 267)
So in Conn. 1 Conn. & 260 -

(112) Holder even in time of *Watson vs Shelly*, that in an action vs Maker of a note by Indorsee the Indorser is a competent witness to prove that it is paid. Ch 224-5. Peak & 652. 117. Tho' as for - merely said not to prove it void.

And in an action vs the Drawer of a Bill (no notice having been given to him of non-payment) the Acceptor is a competent Witness to prove that he had no effects of Drawer (Ch 205. 18th 332) - & thus to excuse the want of notice - For acceptor's interest is balanced (if at all) in one event to Holder & in another to Drawer.

In an action vs the Acceptor the Indorser is not a competent witness to prove that the property is in himself & that the indorsement to Plff was without consideration - Ch 205. 18th 85. *quid vide* -

And it is Holder - that a person whose name is on the Bill as Drawer cannot without a release testify that he did not draw it Ch 205. 12 Mod 345. Holt 297 *Trials per pais* 502 - *See* - I do not

the interest balances?

In an action on the Bill the Plff must in (113)
 gen'l produce the Bill itself post-115. Sees if
 lost - Then a copy or evidence by parol of the
 contents is admissible Chit-205-b. 2^d Ray 731-
 Atk 44b- 184 50. Peak R 115.
 (For distinction see "Pleadings" prefat & of c.)

In an action vs Acceptor if he accepted after
 the Bill was drawn & had seen it. the produc-
 - tion of the Bill is suff^t ev. of its having been
 drawn - The acceptance admits the drawer's
 handwriting - Ch 206. Stra 442 - 648. 446-
 Burr 135-4- 184 390 - 2^d Ray 444 - Pal 137- 12 Mod
 244 - Holt 117- 2 Barnard 82 - 7 JR 604. 12 -

So that in such cases proof of the drawer's name
 being forged is no defence for acceptor vs a bona
 fide holder see Bull 370. Sees of acceptance
 without sight of the Bill. (16)

Same distinction holds as to Indorser when
 the action is vs him (16) When the action is
 vs any other Indorser than the Payee? -

Paym^t of money into Court is an admission (114)
 of Plaintiff's signature Ch 208. 2 JR 275. 1st 464-
 184 347- 5 Burr 2637 -

But an offer to pay a part-by way of compound
 is no Ev. - Ch 208. Bull 236 -

Bills of Exchange &c -

When Plff claims as Holder by bare delivery the mere production of the Bill is in genl suff^t evidence of his title - Seems under suspicious circumstances - Ante 107-8. Ch 209 -

If he claims on a Bill transferable by indorse - must & as the case may be a subsequent one (ante 107-8) Chit 209 As where the first is in full

(115) If acceptor having paid a Bill supra Protest-
res Drawer the protest is prima facie evidence of
his not having any effects of Drawer's Ante 62 -
Ch 209-10-155 -

In an action on a foreign Bill as Drawer
or indorser the protest is said to be sufficient
Ev. of presentment for paym^t. & refusal, ante
109 - Ch 210. Bull 270. 45 R 175. Peak Ev. 74 -

The Bill however must be produced regularly
on the trial for the whole declaration must
be proved - Bull 270-1 - See Ante 113 -

But in an action on an Inland Bill the Bill
itself must regularly be produced (ante Ch
Peak 105 - L^d Ray 731 -) for the purpose of
proving presentment & refusal, as well as the
fact of its having been made &c for there is
no protest -

25 241

115

Bills of Exchange &c.

242

Proof that a letter containing information of the bills being dishonored was put into the post-office or left at Deft's house - is suff. ^{evidence} ~~notice~~ of notice given Anti 59-109. Ch 95. 210-274 Oia 509 Poth pl 148. 18th 5. Damard 199. or Burr 199.

(116)

But to let in this Evidence notice must be given to Deft to produce the letter - Ch 210 - Peak R 155. Peak 80. 107 &c.

Action of Debt on Bills -

The action of Debt on simple contract was formerly of common use - afterwards dis used on account of the Wager of Law. Ch 219. 3 DL 155. 341-3 - Co Lit 155. Because formerly the whole sum demanded or nothing must have been recovered - 3 DL 155. Bay 219 2 Roll 70.

(117)

These difficulties are now removed 2 DL R 1321 - Long 6-703 n 174 Oia 249-550 - Wager of Law is not allowed, nor is it now necessary to recover the prior amount demanded -

The action has lately been revived & Chitty says it is now a common action to recover money on simple contract - Ch 219 &c 2 Dost & Pul 249 - In It is not in frequent use I trust tho' it is now a simple & effectual remedy.

Bills of Exchange &c

It has been held that Debt lies not on a Bill of Exchange in favor of Payee or Acceptor (Hurd 481 - 12 Wils 185.) and Ch 220. (as of 1857)

II. Because no priority of Contract -

(I G. thinks there is priority of Contract else how can assignment lie? L Ray 88.

But if A deliver money to B to be paid to C C may maintain debt vs B. (10 & 2 Rolle 441 - 597 -

Besides the acceptance amounts to a promise to pay the Holder - Ergo there is legal priority - Ch 220 - L Ray 88. Com Dig A.

Again - this Bill is an assignment to Payee of a debt due from Drawee to Drawer, & the legal interest in the debt is transferred -

This action has been so long disused that it does not appear to be settled in what classes of cases it will apply 10 Mod 38. Stra 680 -

118) II. Said Debt will not lie because engagement of Acceptor is collateral i.e. to pay if Drawer does not - But this is incorrect - the acceptor is first liable (see obligation of Acceptor ante)

And it seems that whenever the Com. Law or custom claims a duty or rather an

Bills of Exchange &c.

246

obligation to pay money Debt lies Ch 120-1-
Hartor §46. Com 10 A. Du. When Com. Court-
will lie I conceive Debt will lie

Holden that Debt lies wth the Maker of a Pro-
= misory Note Ch 221-10 Mod 38. Bask 94 2E
see Stra 180- Du. except for the "Payee"
But- does not- the same reasoning hold, as
in the case of Bills supra?

274

A contract of Partnership is one by which two or more persons unite their money, goods or labor for the purpose of making profit, upon an agreement that the gains or loss shall be divided proportionally between them - Wats 17. Doug 536. or 571. 2 H & D 247. 2 DCR 498.

As to what amounts to a Partnership within this definition see further 3 P Wms. 402. 1 H & D 34. 4 East 144 - 4 Ecl 182 -

And he who agrees to share with another in the profits of business, makes himself liable to third persons for all losses even tho' there be an express agreement between the two persons to the contrary. For strangers give credit to the general profit of the trade - & a credit is obtained for the common benefit of all who share in the profits. Therefore it is but equitable that all who share in the benefits should be liable for the losses. Wats 27-8. 35. 44. 5. 73. 5. Daines 343. 1 H & D 57. Corp 814. 12 Mod 441 -

So tho' the parties transact business in separate houses & under different firms - under an agreement to share each other's profits - but not each other's losses - Wats 27-73. Corp 814 -

Such an agreement however is valid (excepting one of the parties from losses) as between themselves, so as to entitle the exempted party - to an indemnity vs the other. See qn - for it is said that the ex

Partnership.

= completed party would in that case receive dividend interest for his stock - Wats 73. 17 DC 57.

But by Stat. of this State - limited partnerships are allowed, in which a party complying with the requisites of the act - can be subjected only to the amount of his original stock - Similar Stat. in N.Y. In many parts of Europe - such partnerships are allowed - Wats 73 -

These "requisites" are such as are intended to give publicity to the limitations vide Conn^t. Stat

I intend to treat of Partnerships however as they exist at C. Law, or rather Law Merchant - which is a branch of the C. Law.

2 - Partners are joint-tenants of all the partnership stock & effects, not only of the original stock, but of all that is afterwards acquired in the progress of this joint business - Wats 17-18. 116. 32. 1 Ves 242 - Comp 449 -

Two or more persons holding property by a common or undivided possession are not of course Partners - to make them such there must be a contract of a Partnership - Thus joint legates, donees, or purchasers of one & the same subject are not as such partners - Wats 19. 32 - 58. 100 - 184 - 1 Roll 114 - See "Joint Tenants" &c -

The Partners are joint-Tenants of their partnership effects & professed per my & per tout. there is no jus accrescendi between them - Wats 21-124-128. Corp 471 - Wats 63. Comb 174. For the Law Merchant governs & upon the death of one of the partners his share devolves upon his representatives -

A person who advances money to a trader & thus becomes interested in the profits of the trade, may make himself a secret-partner in favour of 3rd persons - without intending it.

The Criterion is this, If the Lender in such case is to receive a certain fixed premium for his money he is but a lender - If a certain share of the profits - or an amount depending upon the success of the trade - he is a partner - Wats 27-31-2 B & O 998. 947. But the latter proposition holds I suppose only in favour of 3rd persons -

Partnership is constituted (only) by voluntary agreement (3) must express or implied - & if two or more merchants join capital for general trade or for any particular branch of trade - they are Partners - Wats 32-3 -

And Executory agreement⁵ for entering into Partnership may sometimes be specifically enforced in Equity Wats. 32-3 - 2 B & O 33-3 Atk 388-4 -

If no express agreement is made as to the proportion of profit & loss - both it is said are to be divided

Partnership

= value equally. Wats 34. (See. If the proportions of Capital are unequal? Share not - but in proportion to the several shares of the Capital stock Wats 21 - And that is the meaning of the Rule - This Rule prevails only as between themselves for as to third persons they are both liable for the whole amount due from the concern. Wats 34 -

But to make one liable even to third persons as Partners - must there either must have been an agreement that he shall share profit or loss with another, or he must have permitted the other to hold him out to the public as a Partner - Wats 40 - 4 - Long 371 - (Hume as Lawes) Comb 793 -

Hence if two persons advance their several moneys together in the purchase of a lot of goods. (a cargo for example) not as stock for a joint trade, nor for the purpose of j^t. profit but with a view to divide the property that each may have his share to his own separate use, they are not partners. Wats 40. 5 8. Long 371 - 174 DC 37 -

14

So if A B & C agree that A shall purchase certain goods in his own name & that B & C shall each share one third of the purchase at first cost - they are not partners - nor by this contract - The agreement that B & C shall share - only a sub-contract (St.) The property is not joint stock -

So that to subject one as Partner on the score of his sharing profits & losses - he must be jointly interested

with another not only in the purchase, but in the sale of the property - 20 at 45. 18 DC 37. Long 371 -

Hence if one Partner on retiring from the concern lends money to the other at lawful interest - with an additional annuity for a certain time, the transaction is not a continuance, or renewal of the partnership the interest on being independent of the profits - 20 at 44 - 2 DC 2 998 -

But if the annuity had been expressed to be in lieu of profits - 20 at 44 - 5. 2 DC 2 999 - or cited - So ruled where the retiring partner sold his stock to the other for a time certain, or an annuity (as in super) for the annuity was virtually a purchase of the retiring partner's share of the accruing profits -

If one of two joint merchants dies - all the partnership renewed is survive at Law to the survivor Hence the Exec^r of deceased partner cannot join with survivor as Plff in an action to recover a debt due to the partnership - 20 at 44. 17. 100. 124. 128. Sal 444 - Ech 118. 2 DC 242 - 252. vid "Pleadings" & "Err^r & Rem^r" -

But the right or beneficial interest of the deceased (5) partner is transmitted to his Executor. And the survivor is as to the share of the deceased partner trustee for the Exec^r & must account for what he receives (It) L^r 24 cy 740. 20 at 124 - 244 - 5. "Executors & 131 -

Partnership

Nor e contra can the Exec^r. of the deceased partner be joined as debt with the survivor - by a partnership Cred^r. - For the whole liability at Law survives ag^t the survivor - And besides the survivor would be charged by the judg^t. de bonis propriis - the Ex^r. de bonis testatoris - Tho' the Exec^r. may be compelled to contribute - 20at 49. 63 - Carth 170-1. Comb 474. Sal 444. 3 Lev 228. 390 - 20at 60.

But the Exec^r. may be subjected in Equity. 20at 60 - 2 Ven 292. 277) 2d. Unless satisfaction is unattainable from the survivor -

How far & in what manner one partner may bind the other by drawing transferring, & accepting bills of Exchange - See Title Bills of Exchange 13. 20 - 20at 49. 51 Sal 126 - 1 Ky 19. 68. Gibb Cr. 117-8.

In case of Trading Corporations no one Corporator can as such by his sole act bind the corporation. 20at 49. 2 Ky 175. Sal 126 - 442 - 5 Mod 398. 120. 345. 1 Vent - 152 - 1 Leon 198. For the body politic can only be bound by a corporate act - 2 Ky 175 - Sal 126 - 442 - 5 -

On the other hand the individual members of the Corporation are not personally liable - Nor is their private property liable for the debts of the Corporation - 20at 53 - 272 672-3 -

When a bill drawn by two persons (not otherwise partners) & payable to their own order, they by the very act make themselves partners ground the interest in it -

Kinds of Partnership &c.

Partnership in trade may be either General or Partic: (b)
 - ulas - called general - when formed for the ordinary
 & general purpose of carrying on trade. When it extends
 only to some particular concern - or single dealing - or adven-
 - ture, it is Special (Particular) as when it embraces a
 single voyage. Wat 5-2-7-8. 73-4. In both cases it re-
 - spects only personal chattels - Wat 5-8.

And the property or effects to which it extends become
 the joint-property of the partners - on the execution of
 the contract of partnership - whether delivered accord-
 - ing to the agreement or not. For the possession of
 each is the possession of all - Ante 2. Wat 52 -

But the members of incorporated trading companies are
 not Partners. the individual corporators are not known
 in Law & individual corporators can not bind others
 of the Company by their acts - Ante 5 -

Partnership concerns are governed by the Law Mer-
 chant - & the general law of Partnership is a branch
 of that code - Wat 52. Co Lit 11 b. 2 Roll 114 -

In Partnership concerns. Courts of Equity have acquir-
 - ed a concurrent jurisdiction with Courts of Law. The
 power of compulsive discovery has led to Equitable juris-
 - diction in all matters of account & as incident to
 the cognizance of accounts that of Partnership has fol-
 - lowed - Wat 60. 30 L 437. 2 Vern 292. 277. Indent in Eq?
 jurisdiction in matters of account is now exercised almost
 exclusively in Equity. Account is the usual remedy in Court.

Partnership -

(7)

A debt contracted by one Partner in the name of all, will regularly bind all in what concerns the joint trade - But if any one makes a disclaimer or protest that he will no longer be concerned in the partnership - he is not liable to a third person trusting the partnership with notice of the disclaimer - Wat. 54. 61 - Sal 292 -

So. of a Bill of Sale of Partnership goods, by one is a sale by all & payment to one is a payment to all (part 10) Wat. 61-2 - Do - 110. 12 Mod 447 - Cow. 445.

The distinction laid down is, that the act of one partner binds all. if it concerns the joint trade -

Aliter if it concerns the party acting, only -

1 East 48. Wat. 49-58. 61-1-8. 104-5. 229-252 - Sal 290 -

126 - Bull 290 - Hyd on B - 68.

This as a general proposition is correct. But suppose that a partner borrows money. buys goods or otherwise contracts a debt actually on his own sole behalf & for his own sole use - but ostensibly for the partnership - The other party contracting supposing that the debt is contracted for the benefit of the partnership - Are not the other partners bound? I think so clearly.

A Partner not appearing ostensibly as such is termed a dormant or sleeping partner. But when discovered he is liable to the same extent as an ostensible partner Wat. 63-4 - Doug 371 - 10 Dan 2.

To constitute a Special Partnership the share must be (8) joint & there must be a community of profit & loss as in general partnerships. 20at 74.

But owners of a Ship contracting for the carriage of goods on freight for a particular voyage, are deemed special partners as to that particular concern. 20at 72 28 Cent- 146 - 2 Poph 141 - 2 Show 384 - Palm 399. 2 Roll 348.

Part owners of a ship are as such tenants in common at least such is the rule of the Maritime Law. (20at 75-8 Moll 309.) Tho' tho C.L. it is said regards them as joint-tenants. 20at 78. See gen. in 20at 76. Ray 15. Lev 29 - 1, Feb 38. 2 Linn 228. they are styled tenants in Common.

Since each part owner being possessed per my & per tout - any one of them may by C.L. take possession & prevent a voyage projected by the others. 20at 78. (And such is the rule of C.L. respecting all joint-tenants, for there is no coercive remedy between them -

(But owners of a ship as such are not-partners (except) For a ship in ordinary cases is not built as stock in trade; tho' undoubtedly if Partners build a ship as Partners, then the partnership extends to the Ship.) -

In the case *supra* (where one part owner takes possession) The other part owners by entering into a "stipulation" in the Court of Admiralty. (i.e. a recognizance

Partnership

by way of security to the dissenting owner) may by the maritime law prosecute the voyage: But this can be done only in the Admiralty Courts. - *Wats* 75-80. *Sel* 223-35. *Stoa* 890. *120ils* 101. *Ray* 78. *1 Hyl* 38. *1 Lev* 29. It being a proceeding wholly unknown to the ancient Com. Law.

93

By this security the part-owners who send the ship to sea are bound to indemnify the dissenting parties, if the ship be lost. She being at the sole risk of those who adventure. - *Carth* 12. *Wats* 78-9. *Hard* 473. *6 Mod* 182. *12-26-79*. (Tho' probably he would receive no compensation for the use of the ship - nor any share of the profits of the voyage. *SB*.)

And an action lies on the stipulation in the Admiralty Courts in which it was taken. This at least seems to be the better opinion clearly. - *Wats* 77-9. *1 Ray* 235. *1285*. *6 Mod* 182. *Barnardiston* 415. *Carth* 26. *Combr* 109. *Tholt* 647.

If a part owner disapproves of a proposed voyage, but does not expressly forbid it - he can have no remedy tho' the ship be lost in the voyage. If he does not expressly dissent he is deemed to assent to it. *Wats* 79. *Stoa* 230. *Carth* 26.

And in this case if the Ship returns, he is entitled to an account of what is earned - & a share of it. (*SB*.)

But owners of a ship may sever it seems. (i.e. each

bring a separate action) ag^t. a wrongdoer for de-
-straying - or taking her away. So that each may
recover his own proportion for himself - It seems the
Maritime Law furnishes the rule in this case. 1 Wats
75. Ray 15. Lev 29. 1 Hlt 38. 3 Linn 228.

Contrā as to other joint tenants by Common Law.

In case of Partners in trade each may dispose of (10)
any or all of the effects. (ante 7) For each is the agent
of the partnership & such sale is within the general
scope of trade. Wats 61-2. 80-110. Cuz 445. 10 Med 447
So also, one acting in a partnership concern may
commit an act of bankruptcy so as to subject the
company to a commission of bankruptcy. Wats 105. 110.

A Ship Master is not as such a partner with the own-
-ers. He is their agent. & in the choice of him, each
owner's vote influences in proportion to his share.
Wats 80-1. Holt 11. Morr 918. Maloy 310. 322.

When a partnership is formed by one party's con-
-tributing money or effects. & the other labor or skill
the latter does not always share in the principal
but only in the profits. Wats 102.

Each partner in acting for the whole is bound to
the same care & fidelity as he would exercise in his
own individual concern. (Wats 113. See "Partnership")
or rather as a man of ordinary prudence would
exercise in his individual concern.

And if any loss accrues thro' his omission of such fidelity he is answerable to the other partners for the loss - Wats 113-14- So if he exceeds his authority & a loss ensues - Wats 115.

But he is not liable for losses happening without his fault, as from a mistake in judging - Wats 113-15.
Vide "Partnerships" -

(11)

The usual right of each partner to sign for the whole may by express agreement be confined to one of them. (Wats 115.) And this is often done in limited partnerships. If this agreement is known to those who deal with the company it will be binding & trust as agt. them, as it is of course between the partners themselves -

Partners are preferred per my. & per tout (by the half & by the whole. ut ante 122) but nothing can be the exclusive ultimate share of either except his proportion of the residue after a balance of accounts struck between them. Wats 116-128. 140
272 478. 6th § 96-7. Comp 448. 9-71-

Ex. A & B partners in equal shares. Clear value of the partnership property at the dissolution \$20,000
But A owes the partnership \$10,000 - part of the \$20,000
Then \$20,000 - \$10,000 = \$10,000 property on hand to be divided equally - But B has a lien on A's half till A pays him \$5000 (i.e. half of the debt owed by A to the partnership) for the creditor partner has a lien upon all the effects - for what is due to him from the other. His representatives have the same right & lien - Wats 124-8. Wes 242-252 -

(11)

Or thus - Clear value of the stock at the time of dissolution \$20,000. A owes \$10,000. which added makes \$30,000. partnership property - of which B's to receive \$15,000. & A \$15,000. But as A has already received \$10,000 (amt. of his debt) A of course takes but \$5,000. of the amount of stock on hand & B the remaining \$15,000.

By Execution if one Partner for his private debt - the partnership's effects may be taken upon it. But only an undivided half of the interest (where the shares are equal - i.e. only the debtor's share of the interest) and what is taken can be sold by the Sheriff. (vide Watts 101-2 & Holt 643. that no more can be seized - incorrect) And the Purchaser is tenant in common of the goods sold with the other partner. Watts 120, 128, 146, 184. Sal 392. Shaw 173-4. Holt 302 - Com R 27-77. 620. King 550. L'Ray 871 3d Wm. 25. Corp 445. For the Sheriff cannot make a division of the effects.

But the Debtor's share cannot be definitely ascertained till the account of the Partner is settled if their account is still open. (So of land in certain cases) - (It) Resort must be had to a Court of Equity

So. after a dissolution by consent. the legal interest remains as before, tho' the partnership is at an end - the parties are still joint tenants tho' not partners - Watts 125. 40. Corp 449. [12]

Dissolution of the Partnership does not change the

Partnership

the partition nor make division of the partnership effects. The interest of the partner, remained as before. 30 at 140. Corp 449.

And the separate Creditors of one partner can't affect the Partnership stock any further than the partner indebted himself could. i.e. can take no more than he then owned. 30 at 124. 5. 9. 40. 100 242-52. 200 293.

Same Rule tho one becomes a Bankrupt.

The shares or ultimate interest of the several partners are usually ascertained by a Bill in Chancery.

And if one of two Partners becomes Bankrupt, the other may for valuable consideration & without fraud, dispose of all the Partnership effects. For his power over the effects is not impaired & tho' he should afterwards fail the bona fide vendee will hold ag^t the assignees of both partners. 30 at 140-8. Corp 445.

If one partner takes out of the partnership more than his share of the stock, his separate estate is liable to the other for the excess. 30 at 148. 151. Cited note 225.

When partners become bankrupt - their allowance is to be divided according to the proportions in which their respective interests (joint or separate) have contributed to the joint debts. 30 at 152. Corp 455.

If one partner has received money belonging to the other, & wrongfully carried it to the partnership account - the latter may recover it from the former in indebt: assump: for money had & rec^d. *Wat 153. 2 M 47b.* (13)

But if one receives money due to the partnership, the other can't maintain assump: for it - or any part of it - till a balance is struck. *2 M 478. Wat 157. 221. Eccl & 98. 7.*

And when after the death of one partner money due to the partnership is paid to a third person the surviving partner may recover it - as received for him - in his individual capacity - & not as surviving partner - *Wat 153. 8. 2 M 47b.* For when the money is rec^d. the whole right to receive it is in the surviving partner.

Even after a dissolution of the partnership one cannot maintain Trover ag^t the other for a conversion of the effects. For they are still joint-tenants tho' not partners - The right of each is only to his share remaining after a balance struck (p 11) *Wat 140. 6. 294-5. 5 Couz 449. Litt S 321.*

Partners how far affected by each others wrongs -

If an illegal contract is made on the partnership account by one partner, even without the privity of the others - they cannot maintain an action upon it. Ex. *Smuggling*

Partnership

contract. Watts 110. 37R 414. For the Law cannot be violated to protect the innocent parties from loss.

Quia is the same (where the contract is intended to evade our Law) tho' the contract was made in a foreign country - if it was between citizens of this country. (R.)

As to a contract made abroad - if the Off was a foreigner & was not himself an agent in the prohibited act. (Comp 34.) Ex. Goods sold abroad by a foreigner knowing that they were to be smuggled here but not a party to the act of smuggling. For he was not subject to our Law.

As to contracts arising consequentially out of illegal partnerships concerns see 'Contracts' + Watts 11-75. 37R 418. 4 Burr 2089.

If partners engage in a smuggling transaction all of them who are privy to it are liable to prosecution whether they are all present together or not - or any one of them may be prosecuted alone - Watts 181-91. Bank 98. Com R 610.

But if one Partner only is engaged in such a transaction without the privy of the others (tho' on partnership account) the latter are not liable to punishment. I trust. Tho' they may suffer civilly by the illegality of the contract. (R.) The offending party however would

be liable in such case for any damage sustained by the other - as an agent of any kind would be liable to his principal.

Partners engaged solely in the smuggling trade are liable to the Bankrupt Law - as partners in a lawful trade are - *Watts 194. 2 Atk 199. Coke's DL 17.*

For the Bankrupt Law are made for the benefit of the Creditors & not the Debtors -

If a Contract purporting to be a Contract of Partnership, is in reality a cloak for Usury or other unlawful end - it is not binding - As for Example - A lends to B \$1000 for the purchase of goods, on B's note payable on demand & on agreement that A should have $\frac{1}{2}$ the profits on the goods - & this with intent to obtain illegal interest - A cannot recover any part of the profits - *Watts 195. 201. Corp 793. 4 D R 353. 340.*
See "Usury" -

Accounts between Partners how settled.

(16)

On a settlement of accounts between partners each is allowed in the account - what he has brought into the common stock & charged with what he has taken out -

A Balance found between two or more part-

Partnership

= men agt. and one of them is not therefore all due to the other or others but to the Company. So that the half or other fractional part of the balance will belong to the Debtor partner himself. Ex. A & B put into the whole stock equal sums say \$1000 each. A has taken out \$100. but B nothing. A then owes the Company \$100. but he owes B but \$50.

The Stat. of Limitations does not run between partners. Yet after their dealings have ceased for a long time (as for 20 y. or) Equity will not decree an account. but leave the controversy to be settled at Law. Wats 212. 213.

Gilt Eq R 224. For the power of granting an account being discretionary with the Court they will refuse the Bill for its inexpediency.

When the account between the partners is unliquidated the remedy at Law is by action of account. But the more usual remedy is now by bill in Chancery. *Bill' Account'* Wats 48. 228. Gilt 172 a. 506. 437. 481-2 -

In Court. our Stat. has made the action of account sufficiently remedial

(171) But after a balance struck the party in whose favor it is may maintain a *sumpsit* for it agt. the other. For then there is no need of suing for an account. This is *Asumpsit* on an *in diuinal computascent*. Wats 221.

27A 428. See "Assumpsit" -

If it be agreed in the articles of Co-Partnership to submit all controversies between the parties to Arbitration, the agreement may be pleaded in bar of a Bill in Equity provided the submission gives authority to the Arbitrators to examine the parties as well as witnesses under oath.

Altho it is no bar, where a discovery is sought by the Bill. Because without such authority the arbitrators could not command all the sources of information which in Equity are deemed necessary. 20 A 297-8. 2 A 750.

If Partners borrow money which goes to the use of the partnership - tho' advanced upon the sole bond of one of them & they become bankrupts the lender may come in under the joint commission it against the firm - For (Wat 229. 1 A 225) the money went to the use of the firm - At Law however the Creditor could recover on the partner giving the bond only. 1 A 225. Wat 229.

If two partners agree to pay money equally out of their respective private funds - but act: ally for the benefit of the firm - they must be sued jointly on the contract. Wat 229. 32 - 1 A 231.

[For the rule relating to the joinder of partners as P's or D's in common cases - & the modes in which advantage is to be taken of their non-joinder

see "Pleadings" - 2045 233-245. 1820. 5 Burr 2611-2612 1895 J-

18). When Partners in trade having joint & separate Creditors become bankrupt or where one of them becomes so. the rules established in Equity for applying their joint & separate property towards the payment of the different classes of Creditors are.

I. Ina - the joint property is to be applied to the payment of the partnership debts, & the separate property of each partner is to be applied (in the first instance) to his sole debts.

II. If there is a deficiency of Joint property for the joint debts - & a surplus of separate property (as where the firm only is insolvent & an individual partner not so) that surplus is liable for the joint debts.

III. If there is a surplus of joint property after payment of all the joint debts (as where one of the partners only is insolvent, & the firm not so) then so much only of the joint property as belongs (after a balance of accounts) to that partner (i.e. the insolvent) is liable for his separate debts.

To these points see. Cook's 2d 289, 341. 2045 1234. 131 137. 150-3. 216-18. 249. 2 Vent 298. 3070. Ch 481. 20119. 1820. 262

242. Cook 449. 5 Ta 801. 8 Ta 142. 1000 Pl 547.

IV. But if partners becoming bankrupt are (19)
 bound in joint & several bonds, the obligee
 may elect to come upon either the joint or
 separate property (For he may claim a Cred:
 -itor to the firm, or to each partner severally)
 but not upon both except when there is a de-
 -ficiency in the fund which he elects & a sur-
 -plus in the other - Watts 249. 1 Nott 107. 2 Chan
 Ca 139.

If on a dissolution of the partnership the
 partners agree that one of them shall take
 all of the effects & pay all the partnership
 debts & they give public notice - that all the
 creditors are to look for their claims to that one
 partner, this does not prevent the Creditors
 from recovering ag^t all the Partners - For the
 acts of the partners do not bind the Creditors.
 Watts 251-2. Staar 483. 2 Eg Ca 167. 14. 830. 2 10 P 20th 1833

So. tho a Creditor sues after a long delay -
 his delay is not construed as an assent to the
 agreement of the Partners - For a Creditor has
 a right to sue at any time till barred by Law.
 (26) -

If one partner having money as Exec^r. or
 Trustee - brings it into the trade with the other's
 knowledge - it becomes a debt ag^t the joint

Partnership

property - either if with or without the other's knowledge. It is a breach of trust in the Exec^r. & but as to the other Partner it will be considered the money of this partner advancing it.

Wats 258-1 - 3 Br 20 Ch 215.

20)

Acts subsequent to a sale of goods to one partner - ~~no~~ as contract may be evidence that they were purchased on a partnership account. Ex A & D. being partners A purchases goods as for himself - but brings them into the trade as joint property. Wats 259. 371 - 4th 720.

But if it is clear that no Partnership existed at the time of the Contract - no subsequent act by a person afterwards becoming partner with the purchaser will make such person liable for the price. i.e. no such act can make him by relation a partner at the time of the Contract (26)

Thus A & D agree to become bankers in partnership & that each shall bring \$500 into the common stock. A borrows \$500 of J. S. & brings it into the concern. this act does not make A liable to J. S. for the loan. It is the separate debt of A. not a partnership contract. See 1 Conn^t R 4th 720. Wats 259. 271 -

Dissolution -

(21)

A partnership contract may at any time be altered, or dissolved by the consent of all the parties. Even tho' contracted for a fixed time which has not expired. Wats 273.

And when no time is fixed, any one partner may withdraw at pleasure. except under circumstances which would render the act inequitable & dishonest to the others, as, in the midst of some important adventure, or concern which his withdrawing might defeat or endanger. Wats 273-4 -

But where a term is thus fixed, he cannot thus withdraw at pleasure. I conceive - tho' such particular emergency should forbid it, but must still remain bound by his original engagement with his partners - & liable with them to third persons -

But a fraudulent & unreasonable secession (as in such a conjuncture as must render it dishonest & injurious to the other partners) is not allowable. it seems - whether a term was fixed for the duration of the partnership, or not - & he would not only be liable with the other partners to third persons. & to losses - but as the case might be answerable to the other partners for losses occasioned by an abandonment of his duty to the Company. Ex. D. 21 preceding when abroad & abandoning the object of a voyage, or journey which he had com-

(22)

Partnership

is entered on the company's account - *Wats 274-5*

These Rules which involve much discretion in their application are enforced principally in Equity.

Partnership may be dissolved in either of several ways - besides that of mutual consent as follows:

I. By effluxion of time, where its duration is fixed by contract *Wats 275.*

II. So. by dividing all their joint-effects & holding them severally after a final liquidation of the partnership accounts. *Wats 275.*

III. A partnership contracted for a single dealing, or adventure is of course dissolved by the completion & settlement of the concern - *Wats 276.*

IV. It may be dissolved by an award of arbitrators ordering a dissolution - if in the submission the arbitrators are empowered to award a dissolution - (16) -

(23) V. So by the bankruptcy of the firm, or of either of the partners *Wats 282-5. Cow 447 471.* The Commission being a statute assignment of the bankrupt's property to assignees -

[No such rule under our Insolvent Laws].

A commission of bankrupt is in nature of an execution & under a commission of^t one partner all the joint effects may be taken by the Assignees. - Wat 283-5. 1 Dec 183-

VI. So - by the death of one of the Partners & the rule holds tho' the Partnership is composed of three or more persons - Even in such case, the partnership is entirely dissolved, unless there is a special agreement in the articles of partnership that it shall continue. be:
- between the survivors - Wat 294. For the contract is not that any number less than the whole number shall constitute the Company.

But - a temporary derangement - (mental) of one of the partners is not a dissolution (If a recovery is probable - is it a sufficient cause for dissolving the partnership?)
Wat. 345-6-

But - even in case of partnership of two persons (24) - even only - if it is stipulated in the articles that on the death of one the partnership shall be continued, with or for his Representatives - it will continue & the agreements it seems may be enforced in Equity.
Wat 295. 297. 2 Dec 33-

Partnership

VII. Partnership may also be dissolved by an attainder (of Treason or Felony) of one of the Partners. The attainder being a civil death - & having the same effect for this purpose as natural death. Wats 298.

But it is said that in a partnership of free-men (ie Tenants & Liferes) the death of one is not a dissolution of the Partnership. For as the Representatives of the deceased partner are bound by his covenants to the Land - & Lord the engagements between him & the survivors must also devolve upon them. Wats 288. 9 or 298-9.

This proposition is expressed in terms too general & unqualified. tho' the rule may still be correct.

If after the death of one partner the other continues the trade (with the joint-stock) he shall account with the Executor of the deceased partner for the profits. Wats 30.

10 Bro 141. 10 Mod 20. 284 Cas. 5. 722.

And on a Bill for an account of a copartnership, where both Partners are dead - the Court will appoint a Receiver - 2 Bro Ch. 272. Wats 303.

Insurance is a contract by which one party in consideration of a stipulated sum undertakes to indemnify the other vs certain perils or risks or the happening of some event - or rather vs damage from such perils &c.

The party thus undertaking is called the Insurer, the other party the Insured - the sum paid to the Insurer the Premium - The Instrument containing the contract - A Policy of Insurance.

The Species of Insurance are Three.

- 1st Marine Insurance including Bottomry & Respondentia
- 2^d Insurance upon Lives.
- 3^d Insurance against Fire - Marsh. 2.

I Of Marine Insurance.

Marine Insurance is made upon some interest of the insured in ships or goods on ship board against loss or damage from "perils" of the sea & may be either for a given voyage or number of voyages or for a limited period of time - Marsh. 2.

The word "perils" in Insurance denotes the happening of the event or misfortune apprehended -

Its Utility consists in promoting maritime commerce by so dividing losses that they fall lightly upon many rather than heavily upon a few - Marsh. Aw. 3.

The Law of Insurance is a branch of the Marine Law & of the Law Merchant (and the Law Merchant is considered as a branch of public Law, being founded on the custom of Merchants, or mercantile dealings, not in any particular country only - but in all commercial countries in gen^l. Mars. 18. 19. 21. Bills of Ex^{ch} L. N. 1-

There are however, particular mercantile usages prevailing in diff^t. countries having (where they prevail) the force of Laws. And contracts of Insurance made there are construed as having been made with reference to them - post 35. Mars. 19. 171-2 Story 441- Mars 2 67. 360. 392-3. 404. 571- 509- 526.

Hence a usage may be proved by Witnesses as explanatory of a clause in a contract of Insurance. But their opinion of its meaning is not admissible Mars 404. 360. 367. construction being matter of Law. post 35-

In short these usages have the same relation to the Law merchant as particular customs have to the C-L-

The Law of Ins^{ur} is to be found in the ordinances of Commercial States - in the treatises of the learned.
Mars. 19. 23-

Foreign ordinances are not strictly authoritative here tho' they are to be resorted to explaining the usages of other countries - in relation to a contract which is governed in gen^l by the principles of public Law.
Marsh 19- 20. 852 437- 562 -

Parties.

Who may be insured? -

In gen^l all persons whether (2)
citizens or aliens may obtain Insurance here upon
their property - or in the common phrase "be insured" -
Mar 30.

Upon the question whether Insurance of the property of
an alien enemy is lawful, opinions have been much di-
-vided - Marsh 31-8-71 - Peck 13-14-238-40-3 - 100s 319-
15A 84 - 6" 35 - Contracts 29 - Pleas 20-30 -

Upon the Continent of Europe the opinions are unanimi-
-ously against the legality of such Insurance Marsh 31-
Peck 13-14 - In Eng^d the most able jurists have been
divided in opinion upon the point - Marsh 31-3-8 - Peck 13-
240-50 - 15A 84 - L^{ds} Mansfield & Mordaunt, two of
the greatest that ever lived I G^l thought it lawful as being
expedient -

The whole question appears to have been treated in Eng^d as
depending upon principles of policy - For the reasons upon both
sides see authorities supra - The better opinions in my
judg^t are as the contract on this ground -

So the decisions of the S. C. U. S. would lead us to
suppose I G^l.

The principle of the C. L. that all voluntary trading
with a public enemy is illegal strongly opposes such con-
-tracts - Marsh 31-70. Peck 238-346 - 8DA 548. 1 East 96-
475 - 100P. 345 (post 9) -

WILLANCE -

The Acts of Geo 2^d - 33 Geo 3^d have been repealed in Eng.
prohibiting such insurance - but both were temporary
& have expired - Mar 30. Sect 14 -

The general question therefore remains, unsettled but
the late opinions I believe are as the legality & policy of
such contracts Mar 38. & authorities last page -

At any rate no action can be maintained by an alien
enemy during the war whether the contract is made after
or before the commencement of it -

Mar 36-7- 71. b5th 23-35. Reg 648-9 n -

The rule is the same tho' an action is brought by an
agent who is not an alien enemy & tho' he is a creditor
to the alien of more than the amount insured.

But a Neutral tho' residing in an alien country trading
in Partnership with an alien enemy. may insure his in-
terest in the joint property - Mar. 38. b5th 413 -

Who may Insure -

At C L any individual or company
may insure the property of others & so in our Law. Mar 40 -
Sect 14-5.

In Eng^d any individual may insure on his own individual
account - but the Stat of 8 Geo 1st prohibits by any other com-
panies but two which in pursuance of the act are co:

- Established by Royal Charter - Mar 40-1. Peck 5-7. 2ND 379
 Sec 405.

This S.^t extends to secret partnerships insuring in the name &
 upon the ostensible credit of one of the partners only (It) & if one
 pays more than his proportion of Losses he cannot recover a
 contribution from the other - Mar 42-4. 2ND 379. Pea 8.
 "Contract" 39.

But such insurance tho' void as between the partners & the
 insured if he knows of the partnership. are not void as to the in-
 -sured who is ignorant of the partnership Mar 65. 1ST 405.

And such Insurance may be made in Guy.^a when a joint
 capital of each Insurer is liable only for a fixed part out
 in any event for the whole - Mar. 48-7. 16th 513.

Subjects of Insurance -

(6)

Marine Insurance is usually made upon goods, ships.
 Freight. & Bottomry Loans - Mar -

But there are certain articles or interests which for reasons of pub:
 -lic policy, cannot be legally insured at all or only under certain
 restrictions Mar 48.

1st General Rule. Insurance cannot lawfully be made
 here, upon any goods intended to be imported or exported in vio-
 -lation of the laws of this country or the laws of Nations (post 25-7)
 as the insurance if binding would promote an unlawful com.

- *mere* Mar 48. 66. 132. *Peak* 232. *b. Dory* 254

This rule is the same tho' the Insurer is apprised of the illegality of the trade; not indeed from any favor towards him - but from gen'l principles of policy. Besides *in pari delicto potior est conditio defendentis*.

So of course if he is ignorant of such illegality.

Of Contraband goods & Goods are said to be contraband or prohibited when importation or exportation is expressly forbidden by Law. (as Exportation of Wool from G. Britain & the importation of certain manufactures - Mar 50. *Peak* 224. Ins.

Insurance upon contraband goods is void. Rule of public policy.

And where goods (contraband or not) are exported or imported in violation of Revenue Laws of the Country they are called Smuggled Goods (Mar. 48. 50. And in both cases, Insurance upon them is void *Peak* 232. 244. Mar 48. Ex. Goods attempted to be exported or imported in evasion of a duty imposed by Law.

By Stat 405 70^m & Mary the parties to the contract are also subject to a penalty Mar 50.

Whether a trade prohibited by the Laws of one Country can be insured legally in another is a question on which foreign jurists are divided in opinion. Mar 51-2.

But the laws of Eng^d. at any rate pay no regard in this respect to the Revenue Laws of any other Country & a policy opposed to these laws is valid by the laws of Eng^d. - post 80. Mass 53. Bory 238. Park 237. Abbott on Shipping 119.

I G. thinks the Eng. Law is considered as our own.

There are certain articles of property the exportation or importation of which may become unlawful in a state of war which would not be so in peace.

All warlike stores as arms ammunition &c are designated contraband of war, & when sent to either belligerent party by a neutral are liable by the laws of Nations to capture & confiscation by the other party such commerce being inconsistent with a state of neutrality. An Insurance upon property contraband of war is illegal. Horses & their furniture Pitch. Tar. Hemp. Materials for building ships are generally considered as contraband. 2 Vattel 53. C 7. 512. Mar 63-4.

Provisions also when sent to a place besieged are said to be contraband. Mar 64. 2 Vatt 63. post 40-

And all Commerce of a Neutral with a town or place besieged, invested or blockaded is prohibited by Law of Nations. Mar 64. Vatt 63. C 7. P. 117.

If a blockade is duly notified. merely sailing to the blockaded port is a cause for capture & confiscation. & after such notice ignorance is no ex-

Insurance

= case - But if due notice has not been given
 ignorance of the blockade is a suff^t. excuse for
 sailing into the port. - Mar 65. Wat. & C. 144 -
 872 234. Mar 505.

To prevent the transportation of goods to an enemy,
 which are contraband of war - private neutral ves-
 sels are liable to be searched on the high seas by
 the commissioned ships of the belligerent powers.
 And Resistance to this exercise of this right is itself
 a ground of seizure & condemnation. Mar 15-300
 Wat. & C. 114. 872 324.

Without this sanction Rule mandatory.

Insurance upon articles termed contraband of
 war is void even tho' they are carried by Neu-
 trals. Mar 66.

The Rule is the same as to the Insurance upon
 any commerce carried on in violation of an
 embargo lawfully imposed. Mar 66. 7. 106 270.
 4 Nov 177-9. Park 234-7.

And an Insurance upon goods purchased by our
 own citizens of an enemy, in an Enemy's
 country is illegal & void. Mar 71. 872 548.
 Contra 1000. 345.

All trading with an enemy without license being
 illegal - Would the Rule be the same if the
 goods were purchased in a neutral country?

There are certain goods, property & interests which in their nature cannot be insured.

Seamen's wages cannot from a principle of policy be legally insured. The object of the Rule is to prevent desertion in case of disaster & to interest them in the preservation of the ship.

Mar 73-4. 3 Burr 1912. 1 DL 594. 7 DR 157. 2 NR 208. 10. 294.

Note. If a ship or voyage is lost the seamen are not entitled to wages. intended to secure their assistance & fidelity in time of danger.

Nor can any thing in nature of seamen's wages be legally insured. Ex. Privileged property allowed them by way of compensation, tho' not called wages. Mar 74-5. 7 DR 157. Emurizon 40. (10)

But they may insure goods purchased abroad with their wages. Mar 75.

And the wages of a Captain of a ship may be the subject of Insurance. There being a confidence reposed in him. 2 NR 208. 10-

Upon the same principle it is held that the governor of a fortress may insure vs capture by an enemy, during war. Park 13. Mar 75 3 Burr 1905. 1 DL 593. Post 76.

Ins. on principle. For the Insured is required

to give the underwriters, on the policy a full account of the degree of Risk - Danger circumstances, or - which in this case would expose all the secrets of the Garrison

Freight. which here means the hire of a vessel or the price to which the Owner of a Vessel is entitled for carrying the Merchandise of others) may be lawfully Insured. by the Eng. Law. Secus by the French L. Mar 75. 142. Stra 1251. 3702 362. 2 NR 293 Park 9.

11) Insurance upon the Importation of Slaves, in the U. S. of course illegal & void Mar 77. 133. 6. 385 418. 117. Post 27.

In some countries expected profit upon a voyage or upon merchandize is the subject of Insurance. being not to insure gain but to guard us loss.

Emmigon. 39. 150. 2 NR 269. 325. 329. 3000. 75. Park 267-9. Mar 78-9. 111-112.

In Eng^d. altho' it has not been decided judicially that profit so nomine may be insured. it has been decided that an Insurance upon Ship & Goods "the goods valued at \$1000 being the profits expected to ensue on the cargo is valid.

2 East 544. Mar 78-9. 83-5. 111-12. Park 267-9.

2 NR 293-4. 212-13- 3000. 75. Emm. 75. post 13. 20.

It has been decided in Comm^t. that profit may be insured. 3 Day 108.

In these cases the policy was a "valued one" therefore whether the rule would be extended to an open one & indeed whether in the case of a valued one it does not furnish a mode of evading the restraint upon gaming policies. Mar 79. 80-111-112. L'Esperon 5 G 2 709. 2 M 325-9. a cogent argument -

In estimating a total loss upon goods upon an open policy - profit has never been added even when the loss accrues at the port of delivery. Mar 79. (12)

The Rule of damages in such case is the aggregate of prime cost. all duties & expenses. & the premium of insurance. Post 43-126.

Interests Insurable.

It is in strictness essential to the contract of Insurance (the nature & object of it being considered) that the insured should have an interest of some kind in the subject of the contract. It would be a solecism to say one is insured & damaged as a pecuniary loss, which cannot happen. & when there is no interest there can be no such loss. Mar 81-97. 2 Vent. 269. 716. Post 42.

Where there is no interest the insurance is nothing more than a wager or gaming policy. Park 259. 60. 2 Vern 269. 716. Mar 89.

Insurance.

At C L however an Insurance without Interest appears to have been valid. Hence it is not necessary at C L. to allege an Interest in declaring on the policy. Mar 88. 90-8. 108. (Show 156-2 Vern 269-10 Mod 77. Com R 361-Ste 1250. Park 260-85 R 24-2 East 385. Comp 583-Long 301-post 43-

But when necessary to allege an Interest (as now by Stat 11. Geo. 2^d. § 27) not only an absolute but a qualified & a mere equitable interest may be the subject of Insurance. & if one person has a legal & another has an Equitable interest in the same goods - Each may insure to the full value. Mar 81. 10 Ann 489. 13 C R 183-27 R 181-10748. Park 11. 282. Ex. A ship mortgaged.

So when two persons have each a qualified or special legal interest in the same subject (Mar 81. 119-21. 27 R 188. 3 B R 203 - Barr 489-496-) in both cases each may receive the full value of the terms of the contract warrant it. (p. 24.)

Ex. Suppose two liens upon the same subject in favor of diff^t persons. (p. 191) -

It has been held by some that a reasonable expectation of profit or of a future interest may be insured (ante 11) Mar 97-83. This however according to some opinions appears questionable Mar 79. 83-92 -

14) However that point may be the Rule seems to be settled that the profeseion of the subject insured & a reasonable expectation of a future interest in it (tho'

Insurance

depending on the pleasure of Government) is an insurable interest. Ex. When there is a joint capture of prizes by sea & land forces, the captors have an insurable interest before condemnation. post 131 - Mar 83. 49. Park 269. 3 or 8 JR 113 - 114 -

Tho' before condemnation the property is not changed & tho' it is at the disposal of Government. This is a case different from that of Expected profits upon a vested interest.

Trustees of Goods or Ships who are to dispose of them according to instructions, may insure them for the benefit of those who may be entitled to the avails of them. Mar 85. 90. 8 JR 13. 2 D & C 75. 2 NR 209 -

So of a consignee or agent for prizes for both have a special interest. Mar 88. 90. 1 D & C. 315. 2 NR 294. 306 - 7 -

If goods are consigned to A for B the creditor of the consignor. B has an insurable interest.

A General agent on whom a consignment of goods has devolved in consequence of the consignee refusing to receive them, may insure them for the consignor. Mar 91. 215. 1 D & C. 315.

But an Insurable interest can only be founded upon a legal or equitable title. A Claim neither legal nor equitable is not an insurable interest. Ex A & B. purchase a ship which is registered in

the name of A only. in this case B has under the Eng. Register act - no title legal or equitable & of course no insurable interest in the ship or freight. Mar 91 - 285. 5th Dec 709. 3rd 400 -

The lender upon Bottomry or Respondentia has an insurable interest - to the amount of the sum lent. (The lender is indeed in the nature of an insurer for the loan is virtually pay^t. for a loss before it happens recoverable back however in case no loss hap. - sum) & insurance upon his interest is in the nature of a Reassurance. Mar 93. 112. 635. Park 428. 2nd Dec 294 - 6.

But it must appear in the policy that the interest insured is Bottomry or Respondentia under a Guil insurance of Goods. money lent on Bottomry or can not be recovered (Dec 9. 10. 428. Burr 1294. 1st Dec 405. Mar 223 - 613) A Rule intended to guard against gaming policies & usurious contracts -

We can insure only the amount of the sum lent & the borrower has an insurable interest to the amount of the surplus in the ship or goods of the value over the loan - Mar 94. 618³. Dec 10 - Burr 11394 1st Dec 299 - 405. 422 -

If either should insure to a greater amount it would be a gaming insurance & void by St. 13 Dec. II. as to all above the real interest of the party insured Mar 94 - 103. 5. 613. Burr 1400. tho' not void in toto.

Insurance.

376

But the usage of a particular trade may take a case out of this rule. Mar 94. Park 11 -

A Policy on bottomry or Respondentia can not be underwritten by the borrower. For it is only in consideration of the borrower's exemption from sea risk that he is bound to pay marine interest. If then he should assume that risk by becoming an Insurer wth the transaction would be only indirect lending & borrowing upon Usury. Mar 94. 104-5 (Prohibited by Stat. of 19 Geo 2^d -

A Wagering policy is one effected upon a subject (17) in which the Insured has no interest. It is not therefore an Indemnity wth loss. but a mere gaming contract. Mar 97-8. Park 259. (Port 42) -

Wager policies are prohibited by the laws of most Commercial States as being opposed both to the Morals & interests of the public. Mar 95-8.

But by the Com. L of Eng^d. what are called innocent wagers are lawful & binding. Mar 95-8. 11 Co 87. Lev 33. Burr 2802. 1 Pow C. 146 -

The validity of Wager policies at C. L. has been much contested in the Eng. Cts. but they have been fully established as binding at C. L. Mar 95-8. 113. 1 Show 156. 2 Vern 296-717. 10 Mod 77. Burr 695. 8 D. 23. 2 East 385. They are now prohibited in Eng^d. under certain qualifications by Stat. of 13 Geo. II. Mar 103. Peck 263. 4. (Stra 1250) -

Insurance.

A wager policy contains the words "interest or no interest" or without further proof of the interest than the policy, to preclude all enquiry into the interest of the Insured. Mar 97. Part 42.

Upon a Wager policy the Insured can never recover upon a partial loss. For as he has no interest there can be no subject of Estimate Mar 97. Part 261. 2 Burr 183. Therefore the words "free from average" are always inserted in wager policies.

Note. Where the loss is but partial the insured is bound to prove the amount of the loss Hence the words "free from average" inserted.

For the same reason the Insurer can claim no benefit from any thing saved since the insured has nothing to be saved. Hence the words "without benefit of salvage" are always inserted in such policies. Part 1107. Mar 97. Part 261. 2. or "free from salvage".

An Insurance upon one thing or subject but made to depend upon the fate of another is a mere wager - Ex. Insurance upon the cargo made to depend upon the ships arrival. or an insurance upon one ship made to depend upon the fate of another. Mar 106 - 8 - 1502 304.

In a wager policy the insured takes upon themselves to do what-ever they would be bound to do in relation to the wager if they owned the subject

insured. Hence when such a policy is valid it is discharged by a deviation from the voyage tho' they had no control over it. *Mar 108. L^d Mansfield in 15 R 204.*

In a wager policy the Insured takes upon themselves to

Tho' the Insured have an interest in the subject insured yet if it is small in comparison with the amount insured it will be deemed a wager policy. *Mar 109. Cap 583. Park 270. Burr 1171. (p 24 - ante 13)*

A valued policy is one in which the interest insured (19) is inserted; is not such, & therefore not "prima facie" a wagering policy - the proper object & effect of it being only to settle the amount of property at the prime cost. to avoid the necessity of proving the value at trial in the event of a total loss. *Marsh 110. 535. Park 98. 114. 2 Burr 1171.*

But if it appears that the interest is greatly overvalued the contract must be either a fraud upon the Insurer or a wager. *Mar 150. 200. 535. 2 Burr 117. post 43.*

When there is a partial loss, a valued policy is in effect the same as an open one (i.e. one in which the value is not insured) but in case of a valued policy & total loss the insured regularly recovers the whole sum insured in the policy. Even since the *St. 19 Geo 3. c 37. Mar 111. 525. q. 402. Park 98. 103-7.* if the amount subscribed is equal to the valuation - if not equal he recovers the whole amount subscribed.

Insurance.

(21). A valued policy upon the profits expected from the voyage, if it appears fair & not a cover for gaming has been holden not a wager policy. Ante 11 - Mar 111 - 2 - 79 -

Is a valued policy upon the Commission expected by the Insured & Consignor of a Cargo - is not a wager policy - Mar 112. Park 268. This is also frequently the subject of Insurance in the U.S. Emer 11 L 39 n -

Re. Insurance.

A Re-Insurance is a Contract between Insurer and a third person - by which the latter agrees to indemnify the former in whole or in part in the risk assumed by him on the original contract of Insurance Mar 92. 112-5. Park 276-80. 272 182-5. Sep 65. Post 131 -

In case of loss the insurer is answerable to the Reinsured (or original Insurer) but not to the original insured. For as between the latter & the Re-Insured there is no Privity of Contract - March 113 -

But the Reinsurer is bound in the event of a loss to pay in full according to the terms of his contract even tho' the original insurer should become insolvent & pay only a dividend on the original Insurance (Mar 115). Would it not be equitable that the assignees of the first Insurer should hold the difference for the use of the first Insured? The contract being originally valid must take effect according to its terms & cannot be affected by a subsequent one which may diminish the recovery upon the

First Policy

Re Insurance is valid by the C.L. & by the law of most-commercial nations Mar 112-3. Peak 276.

But - having become in Eng^d. a mode of speculating on the rise & fall of premiums they are now prohibited by the St. 19 Geo. II - except in case of the insolvency - bankruptcy - or death of the original Insurer - Mar 113-4. Peak 278-9. 25R 161.

(Ex. A insures at 10 per ct. at a subsequent time he effects insurance at 5 per ct. he thus frees himself from risk & gains 5 per ct.

In either of these events (Insolvency &c) the original Insurer his Executor - Adm^r. or Assigns may respectively (22) effect a reinsurance of the amount originally insured Mar 113-4. Peak 278-9. 25R 161) but it seems of no more.

There are 2 species of Insurance in the nature of Re: insurance - the one when the insured insures wth the insolvency of the Insurer (i.e. procures insurance upon it) the other when the former makes a new insurance in consequence of the latter's (i.e. insurer) becoming insolvent - during the risk - March 114 - This is called Double Insurance -

The former has never been in use in Eng^d. nor I suppose in the U.S. tho' practiced in some other countries - Mar 114-5. Peak 281.

Insurance

Double Insurance -

Is when the Insured effects two Insurances upon the same risk & the same interest - 1 Burr 246 - 496 -

The object of this sort of Insurance is to obtain double satisfaction in case of Loss -

Such an insurance tho' in the nature of a wager, as to the excess over the value of the interest insured is still valid at C. L. Mar 115. 380. Park 280-1. 102 R 416. 1 Burr 492.

But Courts will allow the Insurer to recover but one satisfaction -

He may however notwithstanding sue the underwriters upon both policies - or recover his whole loss upon one of them - but in both cases all the underwriters upon both policies must co-ventually contribute in proportion to the amount of their several subscriptions - Mar 161 - Park 281 - 102 R 416. And he who has paid the whole loss may sue the others for contributions Mar 117. 120. Beaver 242.

He (the Insured) may thus recover the whole sum upon the latter Policy if it was subscribed with notice of the former one - Mar 121. 102 R 103 re. 1 Burr 489 -

Would not the rule be the same if there were no such notice? -

Over Insurance -

That is when in a simple policy the sum insured amount to much more than the value of the property. (24)

Formerly in case of Over Insurance, the first Underwriters were liable to the whole loss & the rest discharged. Mar 118. 1 Shaw 132.

But now they are all liable in proportion to their several subscriptions - Marsh 119 -

When there are two policies upon the same subject if the same person is not in all events to have the benefit of both - the Insurance is not double - And if diff^t persons insure the same thing upon diff^t interests to the amount of such interest. each may recover to the amount of insured by himself tho' it should be to the full value of the property - Anti 13. Mar 119. 21-81 - 100 R 103 - Burr 489. 496.

Ex Two liens or incumbrances in favor of different persons on the same property.

By Stat of 19 Geo. 2. Ch 37 St- The defendant in an action on policy may compel the plaintiff to declare in writing what sums he has insured in the whole & how much he has borrowed on bottomry & respondentia Mar 121 -

The Voyage. is the passage of the Ship from one (25) place or port to another. Mar 122 -

Policies in marine Insurance are generally effected for some voyage tho not universally.

The voyage may be lawful & the transportation of the goods unlawful & vice versa. Ex contraband goods shipped on a voyage in itself legal -

Gen'l Rule. No Insurance can be made upon any voyage undertaken contrary to the laws of the Country or to the law of Nations. i.e. no such insurance is here obligatory. Ante 6. (Mar 122-489 68. 56. 65A 723-8. 36. 562-100 P. 272. 430. 85A 31-45-6-

If an integral voyage is in any way illegal in its commencement no insurance upon any part of it is valid - even tho' such part taken by itself would be legal. Mar 129. 85A 31-45-562.

Ex - voyage to two ports one of them forbidden by Law. & the other not. If of a Contract if one part is void the whole is -

Secus if the Contract is not on an entire voyage (It) -

Of the Perils of the Sea or Risks.

(26)

The "perils" of the sea taken in the largest sense comprehends all accidents & misfortunes to which ships & goods at sea are exposed - from causes which no human prudence in the insured can control. (Port 31-87) Mar 131-364-416-Part 61-1 Shaw 323-1 May 52-76-2 Ryd 248. pl 10-Cont 56-

A common policy includes always an Insurance against the perils of the sea.

In this sense a 'peril' denotes the happening of the event or misfortune apprehended.

It is the extraordinary unforeseen perils of the sea only for which the insurer is liable Post-77. 88. Not for the common wear & tear. & decay from age -

A distinction however is observed in practice between those risks which arise from waves, tempests, rocks, shoals, or and such as proceed from other causes. Such as the acts of Gimmies - unskilfulness, or misconduct of Masters mariners &c. - For tho' both classes of Perils are within the term "perils at sea" in its extended sense (2 Root 248. 10. Com 56. 1 Show 322) yet the former only are appropriately so denominated. Mar 131. 416 -

Insurance may legally be made vs all risks which are incident to sea voyages - with certain exceptions however founded on policy & humanity. Mar 132 -

Thus the Insurer cannot make himself liable for any loss or damage proceeding directly from the fault of the Insured. It would be opposed to the principles of natural justice.

Not for losses (even by the perils of the sea) sustained in an illegal traffic (ante 6. 11) Mar 48. 68. 122. 132 - Park 230. Moll 6227. 515. Bay 256. Ex. In a smuggling

Trade - a contraband or now in the slave trade
Mar 67. 67A 656.

Formerly Insurance upon the lives of Slaves in a
ship engaged in the slave trade was lawful.
But such insurances are prohibited as opposed to
the laws of humanity. Dy St. 30. 34. 39. Geo III. before
the traffic itself was forbidden. Ante 11 - Mar 134 - 6 -
152 656.

As to the point what risks are within the common
policy - the clause specifying the risks seems suffi-
-ciently comprehensive to embrace every species of
risks to which ships or goods are exposed from the perils
of sea voyages. Mar 137. 701 - 2 - 6.

28) There has been great diversity of opinion & various
contradictory decisions as to what is called the "Common
memorandum" - is a clause in the form of a war-
-ranty annexed to the policy by the insured. Mar 138.
155.

This clause was first inserted in 1749. to save the ne-
-cessity of adapting the premiums to the nature
of the Commodity. Mar 139 -

The memorandum is in this form "Corn - fish
salt - fruit - flour & seed". are warranted free
from average unless general. or the ship be straw-
-ded" - (Port 56.) Mar 129 - or 149 - These articles
are selected on account of their perishable nature
or their natural tendency to decay - or damage -
Any other articles might be selected at the pleasure

of the parties.

The word "Average". is here used in a twofold sense implying both a partial loss as contradistinguished from a total one & also the contribution made by the owners of the ship - freight & goods, towards any particular loss or expense sustained for the general safety of the ship or cargo. (post 80 101) Mar 460. 142. Dur 1555. 1702 323 -

Under the memorandum where there is no stranding the Insurers are not liable for a partial loss of any of the articles specified in the clause unless it occasions a general average i.e. unless sacrificed for the general safety of the ship & cargo. (of which see post 101) Nor for any contribution unless it amounts to a general average i.e. to a contribution of the whole concern Mar 141. 8. 150. 460. 2. 3 Dur 1555. 4702 787. or rather of all concerned -

"Free from average unless general" thus means that the Insurers are not liable unless the partial loss occasions a contribution - Mar 141. 8. 150. 460. 3 Dur 1555. 4702 787.

But the principal difficulty in construing the memorandum has arisen from the latter words of it "or the ship be stranded" -

The question has been whether these words amount only to an exception (i.e. whether the Insurers are exempt from any partial loss on the articles "except

Insurance

one occasioned by stranding there being no gen'l average) Upon which supposition (there being no gen'l average) the Insurers would be liable for no partial loss upon the articles specified unless it were occasioned by stranding Or whether these words constitute a condition (i.e. a condition upon which the insurers are liable at supra, at all events if there is a stranding without reference to the real cause of the loss) Upon which supposition if there be a stranding of the ship any partial loss will subject the insurers by whatever cause it may have been occasioned.

Mur 139-155. 3 Burr 1553- Park 112-116- 7JR 210. 4. 783
10130- 2 Sand 270

The latter construction has at length prevailed (so that a stranding as the authorities now stand destroy the exception or proviso in the memorandum & lets in the gen'l words of the policy to operate upon the articles thus specified as upon any other commodities.)

Note. L^d Mansfield held that if the stranding did not cause the loss, the Insurers were not liable
2JR 210- 18JR 410-

The result of the two cases is thus - that the insurers are liable for partial losses upon the articles mentioned in the mem^o. whatever may have been the cause of the loss if there be a gen'l average (i.e. a gen'l contribution) or if the ship be stranded - If not they are liable only for a total loss of those articles -

Thus I. If part of the salt or is hove overboard (called jettison) to save the ship or the insurer is liable because there is a general average (contribution).

II. If there is a stranding & partial loss however occasioned insurer is liable

[a conventional mode agreed upon, to prevent (in case of stranding) any inquiry into the cause of the loss.]

There are some losses & injuries from perils of the sea, but which are imputable to the owners of the ship or to the negligence or misconduct of the persons employed by them, & for which the owners of the ship are liable to the freighters. Mar 156.

Thus if any loss or damage happens to the goods arising from any latent defect in the ship before she sailed, & not upon the elements, or any accident or misfortune during the voyage, the owners of the ship are liable & the insurers are not. For in every contract of insurance there is an implied warranty on the part of the insured that the ship is sea-worthy - & if she is not so - the insurance is void. (Post 78.) Mar 156-364. 372. Park 220-1-231. Long 708. 156-364-372 -

Indeed the Ship Owners & Master are liable as Common Carriers for all losses of goods on board except such as happen (Post 88.)

1. By the act of God (or perils of the sea) -

2. By the act of Public enemies

3. By the act or fault of the owner of the goods
In the last case no one is liable - In the two former the Insurer is liable, under the Common Policy - Mar 159. 157. 1 Vent. 140. 238. Ray 220. 3 Dalt 72. 112. 35. Jones on Bail. 152. L^d Ray 918. 2 Lev 69. 5 DR 651. "Dail int."

Simple theft by persons on board is not regarded as a peril of the sea. as it may be attributed to want of vigilance in the master. Ante 26. For a loss thus occasioned then the Insurer is not liable (Mar 151-) but the master & owners are Mar 157. Park 245.

The word "Thieves" in the Policy is said to mean "afailing thieves". Mar 158. Park 25.

But for losses by Robbery committed by violence from without the Insurer as well as the Master is liable. It being considered as a peril of the sea. Mar 147 158. 161. Park 25. 4 DR 782. 3.

In such cases however the Insurer if subjected may in the name of the owner of the goods recover as the ship owners (unless the act was that of a public enemy. Mar 161) The liability of the latter being primary -

If goods are delivered to the master on shore he is answerable for them as if they were on board Mar 159.

So while the goods are in her boats & barges, to

be put-on board - or landed - the master as well as the ship owner is liable as if they were on board - as Common Carriers -

The boats or being considered as attached to & part of the ship (Mar 159) And their liability continues till the goods are safely landed & delivered to the Consignee -

In such cases the Insurer is also liable for all losses covered by the Policy.

If the loss in such cases is not-imputed to the master or crew, or ship tackle - the Insurer only (32) is answerable &c) But by St. 7 Geo 2^d. Ch 15 & 26 Geo 3^d. 38b. The Ship Owners are liable for losses occasioned by Robbery - embezzlement &c committed by the Master mariners & others - only to the value of the Ship & freight - Mar 160. 1702 18. 78. Dailm 5. 53 -

Duration of the Risk.

Upon the Goods -

To subject the Insurer the loss must have happened in the course of the voyage & during the continuance of the risk insured - (Mar 161 - 615. post 144) -

And every voyage must have a definite commencement - when the insurance is for a limited time the extremes of that time are the termini of the risk insured - Where the Ship is insured outward & homeward for one certain premium - the whole is considered as but one voyage - Mar 161 - 615.

The usual words of policy expressing the commencement

Insurance.

& end of the risk on goods are" by insuring from the loading thereof or & until the same shall be discharged & safely landed. Mar 162.

33)

Hence the risk does not commence till the goods are on board & generally it continues only while they are on board (i.e. actually or constructively on board) But - while in the ship's boats they are considered on board.

So that when they are landed at the port of discharge or if they are put on board of another ship without insurers consent - the contract is at an end & insured discharged as to all subsequent risks. Mar. 162.

But to this Rule there are exceptions founded in necessity - as if the Ship becomes disabled on the voyage & the goods are therefore shipped to another vessel to be conveyed to the place of destination - Port 79. In this case the risk continues. Mar 162. 220-1-374-6. Burr 351- Stia 1248. 1502 611. The rule was formerly thought to be otherwise. Mar 163. Mol 62. c7-§11-

So if it is agreed that the goods shall be removed to another ship at a particular place in the voyage & (there being no other place ship in the place to receive them) they are put on board a store ship, the risk continues on board the store ship. Mar 163- Burr 348.

So. when the Insurance is on goods on board a ship to be delivered at a certain (given) place - The insurance extends to the carrying them on shore in the boat under

the clause "until discharged & safely landed")

1 Burr 348. Mar 167.

And the goods are protected by the policy while conveyed from the ship in lighters to any part of the port of delivery where such goods are usually landed. For policies are to be construed according to the course of trade or usage. and doubtful passages are construed in favor of the insured. Mar 164-5.

But it has been held that if owner of goods takes them into his own lighter to ~~be~~ be landed - the Insurer is discharged from subsequent perils. This being considered as a delivery to him. 2 Pitt 1236. Mass 165-7. Park 23.

If the goods are taken on board a public lighter for the same purpose, tho' hired by the owner, the risk still continues till landing - if the proceeding is according to the usual course of trade. Mar 166-8. Burr 348.

The master & owner of the ship would however be discharged in such a case from subsequent losses. Mar 159-168.

But the owner cannot under the protection of a policy arbitrarily delay the landing at the port of discharge. The Insurers liability continues only for a reasonable time i.e. till the goods can be conveniently landed. Mar 169. Post 82.

Insurance

But this rule also may be controlled by the usage of particular trade Mar 170-2. Long 492.

For every Insurer is presumed to be acquainted with the course of his trade - Mar 182-3- 184-6- Peak 41-8. 4th 206-3 Burr 1707 -

And the usage of another similar trade may be proved to show the usage or practice Mar 172 Long 492 Ex. In fishing voyages.

But a particular usage in the trade of one nation is not presumed to be known to the underwriters of another - Mar 186.

If any great delay is occasioned by necessity or any other reasonable cause in landing the goods - the risk continues - upon the Insurer - Mar 170-2.

When on a Ship's arrival at the port of discharge the goods are sold without unloading & the buyer contracts for the freight of them to another port - but a loss happens before she breaks ground the Insurers are discharged - For the property being changed & freight contracted for de novo - the case is the same as if the goods had been landed - Mar 170.

Upon the Ship -

(36) -

The commencement of the risk on the Ship is various according to the terms of the Contract - Mar 173.

When she is insured for a limited time the risk

Insurance

412

Commences & ends, wherever the ship may then be.
with the time - Mar 173 -

If a ship is insured "from the port of A" & loss happens before she breaks ground the insurer is not liable for the risk does not commence till she sets sail - But if it be "at & from" such a port, the risk commences in port from the time of subscribing the policy. (Mar 193 - Corp 601) But this rule supposes the ship to be at the port mentioned at the time of subscribing the policy. For if a ship expected to arrive at a certain place - is insured "at & from" her arrival then the insurance commences on the moment of her arrival at the place but not before Mar 173 - Corp 601 -

And the risk in such case continues as long as she is preparing for the voyage - unless the voyage is suspended - & the ship suffered to remain for an unreasonable time with the owners' privity Mar 173.

In such cases, after the lapse of reasonable time the risk ceases -

In the Eng. policies the risk is made to continue (37) only "24 hours after the ship is moored in good safety" - at the port of her discharge - Mar 173-4. Skin 243 - Park 23 - 35 -

When the policy is in this form the Insurer is liable for no loss happening to the ship after that time Mar 174 -

And this Rule holds even tho' the cause of her loss existed before her arrival - Thus when Master had

Insurance

been guilty of smuggling on the voyage & the ship was seized for it - after she arrived & had been moored 24 hours, insurer was adjudged not-liable (post 100) Mar 174. 5. 454- 667. 499- 677. Peak 31-

If a Ship is insured for a given time & receives her death wound within the time but still survives the period fixed - the Insurer is not liable. Mar 178. 172 260-

If insurance is made on one's life for a year & after receiving a mortal wound within the year he died after the expiration of it the insurer is not liable. Mar 175.

(38) But - where the Insurance continues to 24 hours after mooring, the ship from necessity leaves the mooring within that time - the risk continues till she returns & is moored 24 hours - (as if she is obliged to perform quarantine Mar 175. 6. She 1248. For she has not been moored 24 hours in good safety -

So if she is ordered to perform quarantine within 24 hours tho' she does not leave the moorings till after that time - For she cannot - after the order to perform - be said to be moored in good safety for this implies an opportunity to unlash - (16) -

So if seized at her moorings within 24 hours (as under an embargo) or retained as a prize, the in-

= Insurer is liable tho' she should be permitted to deliver her cargo - for she could not be said to be moored 24 hours in good safety - Marsh 176-7 - Park c. 211-

But if a ship is insured in gen'l terms "from A to B" without any words expressing the duration of the risk it has been holden to continue till she has been unladen at B. Marsh 177 - Skin 343 - Usage at a particular place as at the port of discharge may vary this rule.

Thus it has been decided upon the ground of usage in such cases that the risk terminated at the expiration of 24 hours after the arrival & mooring. Marsh 177-8.

10th R 117-18.

If a ship is insured generally on a voyage to an Island or land in which there are several ports - The first port at which she arrives, for the purpose of unloading is deemed the port of delivery - Marsh 178.9 - 10th R 417 - 16th C. 412 Sea 39. (39)

The Risk upon the Rigging, Tackle, Furniture & provisions of a ship insured - continues gen'lly no longer than they are on board the ship Marsh 180.

But when it is necessary to put the articles on shore during repair of the ship they are protected by the policy - Ex. Rigging burned by accident Marsh 1802 Burr 341 - 4th R 206 - held that the Insurer was liable for gen'lly it is for the advantage of the Insurer that they should be put on shore & indeed it is necessary in order to repair &c

Insurance.

A liberty in the policy "to stay & touch at any port or place" means only places in the usual course of the voyage. Mar 185-7. 399. Doug 271.

But the construction of this clause may be extended by the usage of trade. Mar 183-6-392-3. Park 41 - Burr 348. 1747. & is extended by custom indefinitely.

A liberty to touch & stay at any port or place does not authorize the insured to break bulk & trade at these places. Mar 187. 3 Ech 2 610.

Permission is confined to general & necessary purposes.

And when a ship touches at intermediate places, she must generally touch in geographical order.

But if a ship insured changes from necessity the order of the places at which she is to touch yet if the original voyage is not abandoned the risk continues. Mar 188-9 - 1 Bos & P. 202 - 301 - 397 - 8 -

Upon Freight.

In an insurance upon freight the risk in fact commences from the time the goods are put on board. If then any previous accident prevent the voyage the insurer is not liable for the loss of any freight which she might have earned if the accident had not happened. Mar 67. 192 - 2 St 1251 -

But if part of the Cargo be shipped when the accident happened, the rest being ready, the insured upon a valued policy may recover the whole freight.
Mar 76. 192. 3rd 362.

If a ship is to sail to a distant port to take in cargo - the risk upon her freight commences from the time of her sailing for that place. The sailing being an inception of the voyage & attaching an inchoate right to the freight; as the contract is entire (40)

Note - By "Freight" is meant not the goods put on board to be carried - but the wages which the ship earns by the transportation.

Change of Risk :

If after an Insurance the nature of the risk is altered without the consent of the underwriter the contract is determined & the underwriter discharged. Mar 193-4. Thus if a vessel insured as a private vessel afterwards takes letters of marque (& reprisal) without the Insurer's consent - he is discharged tho' no use is made of them (5th 580) - for they furnish a temptation to cruise for prizes & thus vary the nature of the risk as contemplated at the time of the contract.

But if the letters of Marque are void for want of any legal requisites, & taken without any intention to cruise (as to procure seamen) the insurer would remain liable (he is not & cannot be affected by them) it is a mere trick upon the

Insurance

Seamen -

So that the master in violation of his instructions should actually cruise for prizes - as this would be barratry -

Mar 195-7 - 6 J.R. 379 - Post 54 - 55 -

The Policy -

(42)

A Policy (as the word is used in the law of Insurance) is a written Instrument - containing a contract between the Insured & the Insurer.

The word is from the Italian in which it signifies a note or bill - So that the term "Policy of Insurance" means a note or bill of Indemnity Mar 198.

In gen'l it is signed by the Insurer only as the premium is paid or supposed to be paid at the time of signing - So that there is no need of any counter promise (in the policy) on the part of the insured. Mar 198-9 - (By accepting the Policy he tacitly agrees to pay the Premium Mars. Appx. 1.2.3 -

An Interest Policy is when the Insured has a real Substantial & assignable interest in the thing insured -

A Wager Policy is one founded upon an ideal risk the insured having no interest in the thing insured. Mar 198. Park 259-60 - Mar 81-97 - 2 Vern 269-716 -

ante 13-17-

Such policies are usually expressed "interest or no interest" - or without further proof of interest - than the policy & "without benefit of Salvage to the Insurer" - Ante 17- Mar 199-97-

In reference to the amount of interest policies are either Open or Valued -

An open Policy is one in which the amount of interest - in the insured is not fixed but left to be proved by the Insured in case of Loss - Mar 199-

A valued policy is one in which a value is set upon the property insured & inserted by way of Liquidated damages in case of a total loss -

Mar 199- The necessity of proving the value in case of total loss is thus saved - for the Insurer has agreed to it as stated in the policy. (It)

The value thus fixed ought to be the true value of the ship (or the prime cost of the goods) at the time of effecting the Insurance -

Mar 100. 199- 2 Vern 716 2 Burr 1171- ante 12-

The only effect of the valuation is that it establishes the amount of the interest of the Insured & operates at C.L. as an admission by the Insurer at the trial would do. (Ante 17- Post 123-144)

Mar 103-5-10- 200- 535- 2 Burr 1171- 2 Vern 716-

* But under the Stat. 19 Geo. 2^d. the Insured must -

Insurance.

Under the above statute the
 prove some interest in order to sustain an ac-
 -tion upon it - but this is all that he is bound to do
 & then if the interest is but slight - the Insurer must
 show it - 2 Burr 1171 - 2 Ventr 716 - Marsh 200 - 103-4-5-535.

Since the above statute the valuation can be only
 prima facie evidence - & the Insurer is at liber-
 -ty to show that it was inserted merely as an eva-
 -sion of the act - ante 19 - Mar 201 - 101 - 535 - 2 Burr
 1171 -

But when a valued policy is honestly meant - as in -
 -demnity contracts will not inquire very minutely
 into the accuracy of the valuation - Mar 202-3 -

(44) It is only in the case of a total loss that there is any
 material difference between an open and a
 valued policy - For where the loss is partial the same
 inquiry as to the amount - must be made in both
 cases - Post 123 - Park 103 -

Insurance is usually procured by Policy Brokers -
 without any direct communication between the
 Insurer & the Insured. Mar 203 -

In such cases the usage is that - the broker (not the
 insured) is liable for the premium & that the
 broker alone & not the Insurers can recover the
 premium from the Insured (Post 55.) Mar 204.
 240 - (See at C L) -

In case of a loss however the Insured only can maintain an action upon the policy - The suit being only upon an instrument to which the broker as such is not a party. Mar 204-5.

Where one wishes to obtain insurance abroad he generally does it through a private agent or correspondent. Mar 205.

To make an agent for the purpose of effecting a policy he must either have an express direction from his principal, or must be under an obligation to insure arising from the nature of his dealing with his principal. Mar 205. (45)

And no general authority relating to another man's goods or ships will make one an agent for this purpose. Hence a ship's husband as such has no power to insure for his owner without express direction to that effect. Mar 205. Dum 72.
(See Mar 218. 1 D & P. 316. as to correspondent acting as joint agent.)

But there are three cases in which one person may be obliged or bound to procure insurance for another & is liable to an action on the case if he neglects.

1st. If a merchant abroad has effects in the hands of his correspondent here, the former has a right to require the latter to effect insurance for him. For he has power to direct the application of his funds, as he pleases.

Insurance.

II. Tho there are no such effects in correspondent's hands, yet if he had been used to execute orders for insurance for the merchant abroad, he is bound to do it again unless he has given notice to the contrary -

III. When the merchant abroad sends Bills of Lading to his correspondent with an order to insure on the condition of accepting them. The acceptance of them amounts to an implied agreement to effect the Insurance. Mar 205 - b. 2 JR 188. 11 22. Park 304.

[461] And if a Merchant having accepted an order for insurance from abroad, limits the broker to too small a premium, so that no insurance can be effected & a loss happens. he must make it good. Mar 206 Park 304. 2 JR 188. See 17 R 22. Secus if he does what is usual to obtain insurance & fails. Park 304 n.

So if one voluntarily undertakes to effect insurance for another & proceeds in it, but by any negligence or unskilfulness renders the contract ineffectual he is liable in the event of a loss. Mar 206 - 7. 16 Apr 74. See 17 R 158. "Bailments" -

In the above cases of negligence & unskilfulness the agent is liable to the same amount as might have been recovered on the policy or the underwriter. but no further. And he may avail himself of every defence which would have availed the underwriter. As fraud by the Insured Deviation. Breach of Warranty. Mar 76. 209 77 R 157. Park 303 -

But he is not liable for the costs of a prior suit upon the policy unless it was brought at his request. Mar 208.

And fraud practised by the agent upon the insured will avoid the policy - tho' the insured is not privy to it or forbade it. Mar 208. 340-50.

17R 12. Park 209. see 2 7R 70. for the principle. Mar 304.

When one of two innocent persons must suffer by the wrongful act of another - he who enabled him to commit the injury must be the sufferer.

The policy when effected is the property of the insured & if wrongfully detained from him. he may maintain trover for it - in which action he may prove his loss if any has happened & recover for it as vs the Insurer. Mar 210. Park 4. (471)

The amount of the loss is in such cases the rule of damages.

If a broker represents to his principal that an insurance has been effected when it has not the latter may maintain trover for it - & upon proof of loss recover for it as vs the Insurer - if the policy had been effected. And the broker is not permitted to shew that no policy was effected. Mar 210. Park 4.

Insurance

481

Form & Requisites of the Policy.

Form. The established form of the policy is very inartificial & inaccurate. 45R 210. Mar 211 -

But it is construed liberally & beneficially to the insured so as to effect the indemnity intended by the nature of the contract. (Mar 211 - Bur 348. And according to the course of trade where effected.

Obscure clauses are construed by the rules of the C.L. It is presumed to have been made subject to that law & in reference to it. Mar 212. Dory 257.

Requisites.

The usual requisites are Ten -

1. Name of the Insured. or his agent. or Trustee must be regularly inserted in the Policy. Formerly the practice was to effect policies in blank, as to the name of the Insured. But the Stat. 25 Geo 3. c 24. requires the name of the Insured (or his agent) to be inserted at the time of the execution if the insured resided in England. & if he resided abroad that of his agent. Mar 218. 1 Dost P. 321 - 352.

It was holden under this statute that the name of the agent when necessary to be inserted must be inserted as agent. that if the principal resides abroad the agent must be resident in Eng. & that the names of all the parties interested should be inserted as above. Mar 214. 1 Dost 313 - Ph 17 -

This Statute was repealed by 28 Geo. 3. c. 51. (No. 214-19
1 D. & P. 346)

By the later Stat. the names or firms of the persons interested - or of one of them - or of the consignors - or consignees - or of the persons giving or receiving the order to insure shall be inserted - ie at the time of executing the Policy. Mar 213. 14. 1 D. & P. 316-

II. As to the description of the Vessel. Name of the Ship or. Master &c - In a policy on goods it is necessary in some cases to name the ship in which the goods are to be carried. It then becomes part of the contract that the adventure shall be in the Ship named - nor can another vessel be substituted except from necessity or with consent of the Insurer. (Part 79) Mar 220. 274. 9. 162. 156. 1 Durr 351. Stra 1248. 15th 611. Park 19.

But in many cases where goods are to be shipped abroad the policy is on "goods on any ship or ships". This is sanctioned by usage and authority - Thus when a person orders a correspondent abroad to send goods to him - the Correspondent may ship the goods in whatever vessel he pleases. for he is the best able to judge in what manner the goods will be conveyed most securely. Part 79. Mar 221. 379. 380-2-3- 2 D. & P. 343. Park 19.

The species of Vessel when known should always be described as "Brig" "Ship" &c. If misdescribed to mislead the Insurer the contract is void. if by mistake - not affecting the risk - or if the Insurer

Insurance

knew the vessel - the Contract is good. Mar 221.

(50)

If the Vessel is a Privateer she should be described as such. If a Letter of Marque it is said to be prudent to do so. & if the fact was concealed & she is captured in a pursuit which she might have avoided the Insurer is discharged. Mar 221.

So also the name of the Master when known should be inserted & if there is no clause authorizing the insured to appoint another, no other can be substituted except in case of necessity or by consent of the Insured. Mar 221. 2. Hence it is usual to insert "after master & name" or "whoever else shall go as master &c." But even this does not warrant a wanton change. And if one is named when another is intended it would be strong evidence of fraud. Mar 222. Judge G. thinks Policy would be void.

III. Subject matter. The subject matter insured must be specified in the policy. Whether ship goods freight or other things. If it is goods it is not necessary to particularize the species. "Any kind of goods or merchandize" is suff. Mar 221. 2 (96) -

But they are sometimes specified at the foot of the policy & when they are so - if those specified are not the ones put on board the policy is void tho' others of equal value are put on board. Mar 222.

If Respondentia or Bottomry Securities are insured they must be particularly described in the policy. (51)
They can not be insured under the general denomination of goods. Mar 223 - 615 - 3 Dun 1394.
106 L 2 399 - 405 - 422 - But usage may create an exception to this Rule. Mar 225 - 94.5 - Park 11 -

The Master's cloaths & the Ship's provisions are not included in the gen'l denomination of "goods". Hence Insurance of goods not liable for a loss on them - unless specially named in the Policy - considered as part of the Ship's furniture. Mar 225 - 627.
Seamen's clothes are not "goods" -

Same rule holds of goods lashed to the deck. they being exposed to greater damage than others must be particularly described. Mar 225. 1 - Park 20 -

Money - Jewels - Bullion may be insured under the gen'l denomination of "goods" - But the Insurer is not liable (sent) for the risk of an unlawful exportation. - Mar 226. Park 22. 4 Dun 1416 - -

Jewels - rings - watches &c worn by persons on board are not included it seems in a gen'l policy on "goods". not considered as part of the Cargo - Not liable to contribute to a gen'l average - Mar 226. 466 - 2 TR 407 - Mol B 2. C 184 -

Insurance on a ship does not cover the Cargo - Mar 227 - Mol B 2. C 7 - § 18 -

Insurance -

52). 4th Voyage - The voyage insured (when the insurance is on a voyage) must be truly described - the place of the Ship's departure & destination - the time & place at which the risk begins & the time when the risk is to end -

If a blank is left for the place of destination or departure the policy is void for uncertainty. Mar 227-8. Story 11. (see last auth) 174 DC 463. The termini are both necessary.

Sometimes policies are effected for a particular term of time instead of a particular voyage - in this case the beginning & end of the term should be specified. Mar 228.

If a Letter of Marque is insured for a voyage with liberty to cruise for six weeks they are understood to be six successive weeks. Mar 328. 403-4. Story 509. If they are not so the Insurer is discharged.

If the port of destination be falsely set forth in the policy the contract will be at once void - Insurance from A to D when the voyage intended was from A to C. Ship lost before reaching the dividing point - the policy is void - not on the ground of an intended deviation - but of a different original voyage from that described in the policy. Mar 229-30. Story 11. 341. Park 299. 27R 32. The voyage from A to D. never commenced -

53) And whatever may have been the original intention (i.e. at the time of effecting the policy) if the Ship actually sails

on a voyage different from that insured the policy is discharged (Mar 230 - 1 - 17R 30) not on the ground of misrepresentation (as the case may be) but because the voyage begun was not the voyage insured -

But when there is only an intention to deviate not-executed (the termini of the voyage being the same as those of the voyage described) the policy is not discharged. Mar 231 - 2 - 7R - 2 HOC 343 - 7R 162. or 65C 5" 581 - 3 East 972. Sub 444 - 1 Root 64 -

Ex. Insurance from A to B, sailed with intention to touch at C - in the course of the voyage) & lost before arriving at a particular point. policy not discharged -

Ques. Is this correct when the Captⁿ so intended at the time of setting sail see infra -

Distinction between a Deviation - an intended deviation & a Different Voyage —

A Deviation is a voluntary actual departure from the usual course of the voyage insured - not in consequence of previous orders to the Capⁿ but in pursuance of a design conceived during the voyage - (If the departure were in consequence of previous orders - it is no deviation but the voyage begun would be one different from the one insured) Port 80 - 3 -

An Intended deviation is such a design (conceived during the voyage) not carried into effect - Story 18. Mar 232 - 392 - 397 - 594 - 155 -

A Different voyage - is as follows - If a ship is insured

Insurance

from A to B. & before her sailing it is determined by the Insured that she shall call at C out of the usual course of the voyage & she sails in pursuance to that prior determination the voyage on which she sails is different from that insured - It is no deviation -

A mere deviation discharges the Insurer from the moment of the deviation but not to render the contract ab initio void -

An intended deviation does not discharge the Insurer if it is not executed -

(54) A different voyage if carried into execution discharges the insured from the moment when decided upon - But if the policy gives the Ship liberty to touch at a place where it is not intended she should go. this will not avoid the contract - It is a mere indulgence to the Insured - not going to the place named shortens the voyage & tends to diminish the risk - Mar 232 - Long 238 -

If from a certain point there are several tracks of which the Capⁿ usually selects one according to circumstances but the insured directs before sailing which shall be taken the policy will be void unless the track pointed out by the insured is the one prescribed in the policy - The insurers are otherwise entitled to the advantage of the Capⁿ's judgment in selecting the track to be pursued - Mar 223 - b. 772 162 -

V. The Perils against which the insured is to be protected must be specified in the Policy Mar 263. for the Insurer is liable for no others -

So for losses imputable to the owners of the ship or to the master or mariners employed by them it is not generally intended that the insurers shall be liable. Mar 237
as by bad storage - Embargo - or theft by master.
or by third person.

By the common policy the Insurer is liable for the Bar-
-rater of the Captain. Mar 227. ante 41 -

By the words "lost or not lost" usually inserted in the
instrument - the insured is made liable not only for
future losses but for those (if any) already incurred -
Mar 237 -

And if there should prove to have been a prior loss
not known to the insured or his agent the clause will
be binding. (16) - & Park 25.

VI. Powers of the Insured - to avoid doubt it is usual to (55)
insert a clause empowering the insured in case of
misfortune to employ at charge of insurers all necessary
means for the defence & security of the subject insured.
The expense to be defrayed by a contribution by the in-
-surers proportionate to their respective subscriptions
Mar 239 - 712 - 4 (also see post 107) This power is of course
usually exercised by the sea captain - insured agent -

VII The Receipt or - The undertaking of the insurers
binding them to the performance of their contract
& their acknowledgment of the Rec^d of the premium
form another clause -

Insurance.

This acknowledgment is intended to preclude all objections from supposed want of consideration.

The premium is not however in fact always paid in advance - It is usually a matter of account between the broker who procured the policy & the insurers -

Mar 239 - 40 - Carth 338 -

The amount or rate of the premium is not settled by any rule - or usage - but by the agreement of the parties (Mar 240) It is deemed fair unless fraud is proved -

56)

VII - The Common Memorandum. This exempts the Insurer from all partial losses on certain perishable articles (ante 28) & from partial losses on certain other articles not exceeding 5 per ct. & from losses on all other goods (as also on the ship & freight) not exceeding 3 per ct. Mar 138 - 9 - 141 - 712 - 14 - 15.

The Insurers however are liable under this memorandum: -
 - damages for losses however small occasioned by general contribution or average. So in private policies if the ship be stranded (ante 28) - Mar 141 - 158 - 9 - 712 - 14 - 15 -
 1" 323 -

IX - Signature of Insurers - date & subscription -

To the sig:

- nature or subscription of the underwriter (Insurer)
 The sum that he insures is generally ascertained - not in body of the Pol^y. for their names do not there appear -

But it is not indispensable that the sum be specified in the policy - One may bind himself

for the value of the subject - or for a given proportion of it - without fixing the value & without naming any sum Mar 241.

H. No date is inserted in the body of the policy. But each subscription is dated - as each makes a distinct contract. Mar 241 - 2.

Policy altered or corrected.

(57)

A policy tho' a simple contract cannot be contradicted, altered or corrected by parol evidence of the agreement - except for mistakes or fraud clearly made out. Mar 245. b. Skin 454.

If mistake or fraud is clearly proved a Court of Equity may correct it. Mar 245. b. 1 Vent 317 - 1 Atk 545.

Q. Can a Court of Law admit parol evidence to vary or correct the terms of the Policy?

Marshall says 'perhaps Court may do so. 245. On what principle except possibly for fraud? Ct. of Law can't relieve of a mistake - but Equity can. as where Scrivener writes \$2000. instead of \$1000. Long 564. Comp 788. M 589.

L^d Holt once cited a case of a policy once being varied (in an action upon it - at Law) by parol evidence that the risk was to commence at a place different from that mentioned in the policy. Sal 444. Mar 347. - In so as he was mistaken in the statement of that case see Skin 454 - Mar 608-9.

Insurance

But the parties may undoubtedly alter & correct by mutual consent. Mar 245-7. Sal 444.

But I think it clearly settled that Parol Evidence cannot be admitted to correct a mistake or vary the terms of the policy.

X. Warranty.

In every policy there is a warranty: = by express or implied on the part of the insured which is in nature of a condition precedent to Insured's right to recover.

This stipulation may be either Affirmative - alleging the present or past existence of some fact (as that the subject insured is Neutral property) (that ship sailed on a certain day &c)

Or Promissory - undertaking the performance of something future - (as to sail by a certain day &c)
Corp 784-5. 788. Long 11-(23) 772 705. 4 Mod 60. 1 Show 326.

If an affirmative warranty is false - the contract is void ab initio. Aliter in case of a Promissory warranty which is not performed - But in this case as well as in the former the Insurer is not liable for losses. Rest 65. Park 177. 350. Mar 287. Long 705. 372 477. Mar 248.

Warranties may be either Express or Implied - Express is one expressed in words - Implied is one arising out of the nature of the Contract but not expressed in terms - Ex. that the ship is sea worthy. Mar 249. ante 30.

Every Contract to be construed according to the Commercial import of the words i.e. as they are understood in the mercantile world. (P 144. Marsh 49.

Every Warranty must be literally complied with, if not the whole contract is void. 7 JR 705. Marsh 250 Comp 784-5-6. the meaning of the parties being that of the warranty. if not complied with. the contract is not binding. Park 393-318. JR 345.

And so whether the thing warranted is material to the risk or not. no matter how insignificant or unimportant it may be. & so tho' the loss does not happen in consequence of the non-observance of this Warranty. As if Ship shall sail with 50 men on outward voyage but sailed with 49. & was lost on home-ward voyage. Insurers were discharged 1 JR 343-6. Marsh 250. Park 319. 8 John 1.

Or if Ship is warranted Neutral. when not so. & Ship is lost by Tempest or Barratry. So. whatever may be the cause to which non-compliance with Warranty is attributable. Warranty must be kept. (59)

Comp 606-7-784. Park 320. Marsh 250-255. JR 348. 3036. unless the Insurer invented a compliance.

Suppose Compliance is rendered impossible by a previous loss or damage within the terms of the Policy. - Ex Insurance "at & from" a port with warranty to sail at a particular day & before the day the subject is destroyed by one of the perils in the policy. as a tempest. Is the Insurer liable? (Vide Sanchez's dilemma in Island of Barrataria.) Insured in such case can't recover - 8 John 1. Park

Insurance

220 - Marsh 363 - Corp 784* Mar 252 - 262-3 -

* This case was lost by subsequent capture -
See (Port-62-7-77) -

The meaning of the Contract is this - "I insure your ship at Port-(of N.Y. etc.) provided you sail at such a day & therefore I do not insure against any peril which shall disable her to sail at such a day -

The Warranty is this - "I agree you never shall be liable on this policy unless my ship sails by such a day -"

The word at port of N.Y. is not virtually expunged because a loss may happen at the Port & yet the ship be enabled to comply with warranty - as if she lost her Main Top sail - or any other partial loss which will not prevent her sailing by the day. The Objection then that there would be no insurance is not sound -

Every Express warranty must appear on the face of the policy (It appearing in written instructions is not suff^t.) they may have been changed) Port-70 - Mar 250. 336-7. Corp 790. Park 921 -

Sufficient if written in the margin this being part of the policy. Mar 252 - 336-7. Bay 12 a Park 321 - Bay 371 - 372 343 -

But a distinct paper containing instructions wrapped up in the policy is not deemed part of the policy - Park 321 - It has no effect tho' it may be proof of mistake -

Insurance

460

So if a distinct paper describing the state of the ship
the particulars of the voyage & referred to the policy
It is only a representation (of which part)
Mar 252 - 326-7. Bory 13 n. Park 321. Port 72.

Yet printed proposals by the Insurers referred to in
the policy & prescribed conditions are in Law part (60)
of the Policy & become conditions precedent to the right
of Recovery by the insured. Mar 252 - 3 - 704-9 -
174 or 254. 211 577 n 594 - 0712 710.

Analogous to a deed referring to another as explanatory

Saturday July 2^d. 1831.

The Subject of Express Warranties -
may be whatever the parties choose - Time of sailing &c
One of the Common Warranties is - that the Ship
insured or whose cargo, in whole or in part) is insured
shall sail or shall have sailed, on or before a
given day - or between two certain days named.
Mar 253 - 61 - 574 - Cope 101 - 784 - Park 328. Bory 346 -
8 Section 1.

This like every other warranty must be strictly per-
formed & nothing will excuse a non compliance
with it not even an embargo by government & it
will not dispense with compliance so as to entitle the
insured to recover for a subsequent loss. Can he in
such a case recover for a prior loss? Sent not.
For in warranties the insured assumes the risk
of non compliance. Mar 253 - Cope 784. Park 325-6.
In anti 59. -

Insurance

So if the Ship is detained by an irresistible force tho' one of the perils insured vs. Mar 254. Park 325-6. Corp 784-

A warranty to sail after a given day is to be observed with the same strictness Mar 254. Park 326. § 9th 1-

But a warranty to sail on or before a certain day is complied with by sailing to another port before the day to join convoy. Tho' the place of Rendezvous is out of the direct course of the voyage. (authorized by usage Mar 257) So that a subsequent detention at the place of Rendezvous beyond the day does not discharge the insurers. Bony 346. Park 327-8. Mar 255-7 Corp 601-

This rule supposes the Ship to be in readiness for the voyage at the time of her thus sailing Mar 254-6. Corp 601. Corp 527-8.

If the Ship gets under sail upon the voyage before the day the warranty is complied with - tho' she is driven back by strips of weather. Mar 261. Bony 352. 2-

In an Insurance "at & from" such an Island (as Jamaica) the word 'at' implies the whole Island so that from any part of it is a sailing within the policy. Mar 254. Bony 346-

Warranty to sail with Convoy.

Warranty to sail "with Convoy" is a usual stipulation in times of war & if not complied with the policy becomes void whether the non compliance is occasioned by the default of the insured or the omission of government to appoint a convoy. Mar 261-2. Pal 443. Bong 72

The latter risk is assumed by the Insured. Immaterial whether the loss happens from want of convoy or not.

By Convoy is meant a Naval force appointed by government for the protection of Commerce. (62)
Mar 262. Park 238.

The convoy stipulated for in the voyage may be for the whole or some part of the voyage. Mar 262
But by a warranty to "sail with convoy" without more is meant a convoy for the whole voyage. (unless qualified by the common usage of the trade)
Mar 263-5. Park 345-6. 3 Lev 320. Bong 72. Post 63 -

A warranty to sail with convoy for the voyage is complied with by sailing either with one convoy for the whole voyage or with several during different parts of it. Mar 263-9. Park 369 -

Sailing with any naval force not appointed by government as a Convoy. is not a compliance with the warranty. Mar 263. 71-2. Park 338. 9. 340-2 -

Insurance.

If the ^{Ship} arriving at the Rendezvous after the Convoy has sailed. sails under the protection of any other naval force (even for the purpose of overtaking the Convoy) the warranty will not be satisfied Mar 264.72 Park 338-9. The latter is not a Convoy.

If the sails for the Rendezvous to join Convoy & is prevented by the perils of the sea occasioning an injury, she may after repairing sail without Convoy at the risk of the Insurer. Mar 262.

Sailing with Convoy from the place of sailing appointed by government is a sailing within the warranty - tho' the rendezvous is not the port of landing at-o from which the risk begins. The place of joining Convoy being determined by usage - Mar 264.5. Sal 443. Park 343-4.

And the Ship is protected by her insurance in passing from the port of loading to that of Rendezvous Mar 265. Str 1265. Park 343.

If part of the premium is agreed to be returned if the Ship sails with Convoy & arrives. She must sail with Convoy appointed for the whole voyage to entitle the insured to a return of any part of the premium. Mar 266. Long 72. Park 345-7.

63) - But a warranty to sail with Convoy for the voyage does not necessarily mean a Convoy from the port of departure to the very port of destination

but such a convoy as government may appoint for such a voyage according to common usage - Ex. Voyage from Cadiz to London & the convoy appointed for such a voyage terminates at the Downs. Mar 267-9. 3XDC 551-

If the Ship sails with convoy for part of the voyage with intent to join another for the residue - this if according to the usage of the trade satisfies the warranty - tho' she miss the latter convoy.

Mar 269-71. 2D&P 111. Park 349-

If separated on the voyage from the Convoy by a peril insured w. (as strips of weather) the warranty is not broken by the separation - the risk continues - Park 347- Long 73. 3Ler 320. Sal 440. 4Mer 58. 1Shew 320.

Sailing instructions are regularly indispensable to sailing with convoy - within the warranty - Mar 271-2 274-8. 264. Park 398. 1D&P. 5. 2" 164)

These are written directions from the Commander of the Convoy to the several Shipmasters under the convoy prescribing signals & all necessary instructions & orders to be observed. The Shipmasters are bound to obey them - Mar 371-3. Park 398.

If the Ship arrives at the Rendezvous at the time appointed but finds the Convoy gone the warranty is not complied with even if she afterwards join the convoy without sailing instructions. Mar 272. 264. Park 393-

(64)

But it seems sailing instructions may be dispensed with under special circumstances, as if the ship is at the rendezvous at the time appointed & is prevented from obtaining them by stress of weather - Mar 274 - 1-8. 1 B & P. 5. 2nd 116-4. Stra 1250. Park 348-9.

But in such cases the master must obtain them as soon as possible or the warranty is broken.

So if the master applies for them - being himself in no default - & they are refused - Sailing without them is a compliance with the warranty. But he must be at the rendezvous in season for obtaining them to avail himself of these exceptions to the gen'l rules. Mar 275-8. Park 341 -

He must also use due diligence to obtain them before sailing, or the warranty will not be complied with - tho' he obtains them afterwards - Mar 376. 2 B & P. 114.

The ship must not only depart but continue with the convoy thro' the whole voyage (or so much of it as the convoy is to protect) unless separated by necessity - Otherwise the warranty is broken. Mar 278. 9.

If she omits to get under weigh with the convoy & is thus out of its protection for ever so short a time the warranty is broken. Park 349 -

But if she sail with convoy & is afterwards separated by stress of weather & unable to join it again the warranty is not broken - Mar 279. 80. 3 Lev 320. Carth 218. Sal 443. Show 920. 4 Mod 58.

Secus if she might regain it & neglect to do so. Mar 280. 3 Lev 320.

If separated thro' the fraud or neglect of the master the warranty is broken & the Insurer discharged Mar 280. Qu - If by Darratry for this is one of the perils insured on. [65]

The Stat. 28 Geo III. prohibits Ship masters (except in certain cases) to sail without convoy in time of war under severe penalties Mar 280-4. 2 B & P. 209

With us if there be a convoy the master may sail with or without it as he pleases (86) -

Warranty that the Ship is Neutral.

In time of war the subject insured is frequently warranted to be "neutral property" or the property of the subjects of some particular Neutral state - Mar 281 -

If the warranty is false at the time when made the policy is void ab initio Park 350-1 176. Mar 287. on the ground of fraud Park 350. Qu. Is it necessary on the ground of fraud? May it not be false thro' mistake? See ante 58.

Insurance

The title to property is often questionable -

But if the property is neutral at the time, the warranty is complied with notwithstanding a supervenient war. A subsequent determination of war being at the risk of the Insurer. Mar 287. Borg 705. Park 340. 37R 477. 3Dun 1419. 1DEK 427.

If false at the time when made there is, in Law no contract. - Seems of the two preceding warranties. Park 350.

The usual evidence of the falsity of this warranty is the sentence of a Court of Admiralty condemning the property as a prize. Mar 614.

In gen'l a sentence of condemnation even by a foreign prize court is conclusive evidence of the point it decides. Mar 288. 99. 328. 614. 77R 631. Park 359 - 61.

But the foreign Court contemplated by the Rule must be one established according to the Law of Nations & of competent jurisdiction.

Altho its proceedings are not evidence. Mar 288. - 9. 513. 15. 87R 248. "Evidence".

(66) Hence the sentence of a court of a belligerent power pronounced in a neutral state is no Evidence here such a tribunal being established contrary to Law of Nations. (July 4th. 1831. Spent at Hartford. In N.Y. died Ex Pres. Monroe)

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Rule - When the ground of condemnation appearing on the face of the sentence is that the subject was enemies property - the sentence is conclusive that the warranty was false - Mar 299. 513-14. 756 601. 8 do 268. Park 366.

And a sentence alleging that the property was "not neutral" (and no more) is conclusive. Mar 290-9. Beaw 314. Park 365. It is said if the ground of condemnation does not appear in the sentence other evidence may be adduced to the ground - i.e. to support the sentence. Mar 341. In as to the extent of the position Park 361.

So if the sentence merely condemns as a prize, without more. Mar 290-2. Park 341. Where is the necessity of other evidence to prove the specific ground? -

But when a special ground is stated which however does not prove the property to be enemy's the sentence is not conclusive. If then the sentence does not necessarily falsify the warranty, its truth or falsity may be proved by other evidence Park 364. Mar 292-4. 756 523. Bony 554. Recital that the property was bound to an enemy's port - therefore seized. Neutral or not is not found -

So if the sentence is ambiguous as to the ground of condemnation - Mar 294-5. Bony 554. Park 366.

But a foreign sentence condemning the property as enemy's is conclusive tho' manifestly unjust - i.e. tho' the proof cited does not prove the fact that the property was the enemy's - Mar 297-300. 756 631. A sentence reciting (171)

Insurance -

the want of a proper list of the Crew & therefore condemned as enemy's property -

A foreign sentence founded on the face of it upon principles repugnant to the Law of Nations is not evidence. But that a false finding in matters of fact is binding on our Courts Mar 299. 75R 131. Park 366. Mar 328.

But such a sentence is in no case conclusive except as to points which it professes to decide. as to facts merely recited it is not conclusive. Mar 300. 89. 87R 192. 25 How 232.

Any forfeiture of the neutral character of the subject insured by the act or neglect of the owner is a breach of the warranty. Mar 300 - 19. 77R 705.

A forfeiture by the wilful act of the master or mariners even tho' the act should amount to Barratry (which is one of the risks insured as) is also a breach of the warranty so as to avoid the policy from the time the act committed. & the insured cannot recover for any subsequent loss. (5 Day 4 Contra) 3 Esh 115. See "Evidence" 72-3. Mar 300 - 4. 3 Burr 14. 19. 1 R 427. 87R 23. 234 - 71 705.

For the warranty implies not only that the warranted property is neutral, but that its neutrality shall not be forfeited during the voyage - by any misconduct or fault of the insured or of the master - or mariners. the warranty then is promissory. 87R 234. 7. 705.

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A ship may forfeit her neutrality or that of her cargo by any act done or attempted in the Law of Nations as in contravention of Treaties - & injuries to one of the belligerent powers - Mar 301. 772 705. 81 234.

Refusal by a private neutral ship to submit to search & visitation by a commissioned belligerent cruiser - is holden to be a forfeiture of Neutrality - & therefore a breach of the Warranty Mar 80. 293. 301. 12-13. 435. 872 23. 234. For such refusal subject the property to condemnation as prize - Statute B3. c7. §14.

Formerly holden contrary as to breach of Warranty - Park 367. Mar 301.

Refusal by the Master to produce the Ship's papers which are the regular evidence of being neutral or not - comes within the above rule Point - Mar 367.

A ship may forfeit her neutral character by sailing without these proper documents required of neutrals - For the warranty implies that the ship shall be neutral for the purpose of being protected See Mar 317-19. For necessary documents.

The want of these documents is however only presumptive evidence of the ship's not being neutral - Mar 319. This rule as far as relates to the question of neutrality must presuppose in an action on the policy no consideration of the ship as belligerent power Mar 319. 323-4.

Insurance

The Warranty also implies that Ship shall also be navigated according to the existing treaties between the State to which she belongs & the belligerent powers -

Post-80. Mar 319. 323-4.

(69). Non compliance with such treaties is therefore a breach of the Warranty. Ex. Want of documents required by treaty - 772 507. 2 Sep 615. Post 559.) And a condemnation for that cause, is conclusive of a forfeiture of the contract as to neutrality.

The rule is the same tho' the loss is not occasioned by the want of such documents. As if the Ship sails without. but has it at the time of capture & is wrongfully condemned on other grounds - For the warranty is a condition precedent requiring a literal compliance (558)

And the fact that the subject insured was neutral will not avail the insured in such a case. For the warranty is broken. 752 705. 2 Sep 615. Mar 319-20-

A warranty that the ship is neutral implies & includes a stipulation that she is entitled to all immunities of a neutral vessel. Hence whatever document is necessary by public Law or Treaty to insure her those immunities is essential to a compliance with the warranty Mar 322.

But a non compliance with the particular municipal regulations of either of the belligerent powers is no breach of the warranty - No neutral

The first of these is the fact that the
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is bound to take notice of them. Contrary to pub.
= lic law. (ante 67). Park 361. Mar 299 - 322. 8. 52
Park 352. 7 DR 631. 8. 343. 562. But they should for
their own safety observe them - Park 361. Ant. sub-law
See Mar 326. 8 DR 444 n)

If however the insured is apprised of such regulations
& does not conform to them he ought to declare them
to the Insurer as he might think it a variation of
the risk. Mar 322 - 6. 52. Park 363. Concealment - (70)
I & thinks would make the policy void. But if
the parties are ignorant of such regulations the
Insurers take the risk - & condemnation founded
upon them does not prove a breach of the warranty.
Mar 323 - 6. 8 DR 343 - Park 360 -

For the Law of Nations (subject to such regulations
only as have been introduced by treaties to which the
State to which the Insured belongs is a party) is the
rule for deciding all questions of prizes Mar 329.
1 DR 343 -

But the Law of Nations is not varied by any Treaty
except as between the parties to it. Mar 333. 6 - 2 -
8 DR 562 -

Representations -

In contracts of Insurance the most perfect ho=
= nesty & fairness are required. Hence any ma=
= tinal misrepresentation - or concealment or

Insurance

the part of the Insured - is deemed a fraud & avoids the policy. Mar 334. Park 197.

A "Representation" in Insurance is called a statement (written or parol) of facts not inserted in the Policy but which are necessary to enable the Insurer to estimate the risk justly. Mar 335. Park 197. It is then no part of the policy as a warranty is & must be.

A Representation may be untrue thro' fraud or mistake.

A wilful misrepresentation of a material fact (i.e. material to the risk), is a fraud & always avoids the policy. So that the insured cannot recover for a loss arising from a cause unconnected with that fact. Representations that the property is neutral. when it is not so. loss by wreck. the insurer is discharged. Mar 335. Park 177-9-177. 203-4-176. Skin 327. Burr 1419. 2 Bl R 427.

Rule the same tho' done by agent. Mar 335-9. 208. 1702 112.

So if the party or agent makes such a representation not knowing whether it is true or false it is still a fraud. effect of it the same. Mar 335-b. 6712. Park 175. 204-5. Burr 1909. Long 247.

So if he makes a positive Representation which is false tho' believing it to be true. Mar 236-9-670. Long 247. 1702 12. Post 175. 205-b. For it must be regarded as insurer's inducement to underwrite or under-

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= true at the premium agreed on - It has all the effect of a fraud tho' not in fact one -

But if he make a statement as a matter of opinion knowing nothing about the subject or having no reason (71) to believe it untrue - it will not affect the policy -

For it being professedly a matter of opinion, the insurer should inform himself of the grounds of such belief - if he wishes to be satisfied - Mar 336. 370.

Park 207 -

Expressing an expectation does not amount to a representation within the rules before laid down. The Insurer might inquire into the grounds of it - Ex - Expected to sail by such a day (Mar 336. Long 292 - Park 205 - 8. But if the Insured had no such expectation the pretence of it would be fraud & I.G. Trust would avoid the policy -

Difference between Representation & Warranty in several very material respects.

A Warranty is a part of the written policy - a Representation never is -

A Warranty being a Condition precedent must be literally complied with - but it is suff^t that a representation be true in substance -

A Warranty must be so complied with whether at all material or not - (ante 58 - 60) -

Insurance

A false warranty avoids the policy as being a breach of the condition of the contract, but a false Representation is no breach of any condition of the Contract but if material avoids it on the ground of fraud. or at least that the Insurer has been misled by it. Mar 336-7-34. Park 196-7-

(72) Written instructions not inserted in the policy & tho' wrapped in it - or even referred to it are only representations not warranties. Mar 337-252. Long 12 n. Park 321. Anti 59.

As any fraud practiced by the agent will avoid the policy so a material misrepresentation will also avoid the policy -

If the broker or agent makes any unauthorized Representations by which the Policy is defeated he is answerable to the Insured. Mar 338. Corp 787 Long 293. Park 237-8. 40-4. 3 Dur 1419. 10 R 427.

In the event of a loss he would be liable to the insured to the same amount as the Insurer would have been if the policy had been good.

66, A false Representation made as to a material fact to the first underwriter is considered as made to all the other underwriters & will avoid the whole policy Mar 338. 670-1 Corp 787. Park 198. 200-7-8. The same signature of the first is often an inducement to others to subscribe. But the subsequent underwriter must make the objection on the trial in the first instance. or he loses

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the advantage of it: i.e. he can't obtain a new trial on this ground - Guilty of Laches Mar 338. Park 208. Long 292.

If matter of mere computation is stated as a fact: it is a representation within the rules & if untrue & material it avoids the policy. Ex As to the time of ships being known to be safe. Mar 338-9. Long 247. Park 205-6.

Suff: that the representation be true in substance Mar 341. Corp 785. Park 208-1. Representation of a given force in the Ship - the actual force tho' somewhat different in particulars is greater than that represented Policy is good.

So voyage represented less than it really is. yet if the actual voyage is as described in the policy & no fraud the insurer is bound. Mar 342-3. Long 271.

A false representation thus will not avoid the policy if there be no fraud & the insurer be not deceived by it - as when the ostensible voyage differs from the real one (the Insurer knowing the fact) & the real voyage is within the policy. Mar 343-6. Long 278. (ante p)

A Representation that the Ship was ready to sail on a certain day when she had in fact sailed before that day is immaterial & avoids the policy. Mar 346-8. Park 182.

Insurance.

Concealment.

As in all contracts "suppositio veri" has the same effect as "suggestio falsi" -

Hence a wilful concealment by the insured of any fact material to the risk avoids the policy. Ex. As to the situation of the Ship - the time of sailing - the nature of the employment &c. Mar 248. 1 N R 14. Peck 174-5. 10 R 115. 594. 3 Dun 1909.

In such cases insurer is not liable even for a loss arising from a cause unconnected with the fact concealed. Mar 374-48. Park 197. 182. For the effect of concealment as of misrepresentation relates not to the time of the loss but to the making of the contract (Mar 348. 52. Stra 1183.) And fraud destroys the contract ab initio. Ex Where the Insured knowing that the ship had sailed on a certain day from Africa. Stated that she was on the coast of Africa on that day. Mar 349. Park 181-2.

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Concealment by the Clerk of the Insured by whom insurance was ordered to be made has been held to avoid the Policy tho' there was no proof of the owner's knowledge of the fact concealed. Mar 349. 350-340-208. Park 209-210-214.

If the time of the Ship's being ready to sail is known to the insured & not communicated. the concealment avoids the policy - Mar 350. 1 Ex 373-407. Pea Cas 43. Park 182.

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If the Ship is engaged in a dangerous service the fact should be made known to the insurer. If he is not liable - Mar 351 -

Material concealment is fatal to the policy tho' the party or agent concealing supposed the fact to be immaterial - Mar 351 - Long 308 - It may alter insurer's estimate of risk Long 308 -

Even doubtful rumours as to the safety of the Ship when insured - "Lost or not lost" - must be disclosed to every underwriter. Altho the policy is not binding on those uninformed - Mar 351 - 20.20 170 - Park 179 -

If the owner having rec'd. uncertain intelligence of a ship's being lost - has her insured without disclosing it the policy is void - tho' the intelligence was false & the loss subsequent - Mar 348.52.

Str 1183 - Park 179 - For the insurance was obtained thro' fraud -

Non compliance with a foreign ordinance (tho' (75) it be contrary to the Law of Nations) should be disclosed as it affects the risk - Mar 352.3-6. Park 159-6.

And concealment by an Insurer may also avoid the policy - so that the premium may be recovered back - Ex If he knew at the time of underwriting that the ship had arrived safe &

Insurance

concealed the fact - Mar 352 - 1 DE R 594 - 3 Burr 1909
(post 132) -

But the owner is not bound to disclose what the
Insurer himself knows - or what he ought to know
ie what every one is presumed to know (Mar 353 -
4 - Ex The nature & ordinary perils of the voyage
of the climate - the probability of tempests - distance
probable length of the voyage - Mar 353 - Park 181-3
1 DE R 463 - 590 -

In pri'l the owner is bound to disclose those facts
only which tho' known to himself the insurer is
ignorant of & has no means of knowing. or can
- soon to suspect - Mar 354 - Park 183 - 1 DE R 594-5
3 Burr 1909 -

So he is not bound to disclose matters of pri'l in:
- intelligence, nor private political speculations
when both parties have the means of judging.
Ex - as to the existence of War or of Peace - or the
probability of either - Mar 353 - Park 183 -

So of facts which go to diminish the risk, for the
concealment of these can not injure the insurer.
Ex. If the insurance is for a given time, or
with liberty to deviate - the probability that the
time will be shorter - or that there will be no
actual deviation - need not be disclosed -

If a private Ship of War is insured any one =

Insurance

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= detailed secret enterprise within the scope of the policy need not be disclosed. (Mar 354 - Park 182.) For in such cases it is known to all that some hostile enterprise is intended. & if insurer does not insist on information, he waives it.

That the Ship is foreign built need not be disclosed (76) the insurer may inquire as to the fact & then ascertain the information if he wishes it. Mar 354.

Not necessary for the insured to disclose the state of the Ship - there being an implied warranty in every case that the Ship is sea worthy - Mar 355. 64 - Park 229 - Indeed it is a rule that the owner is not bound to disclose any thing which he stipulates by a warranty express or implied Mar 355. 73 - For the Insurer has by the warranty all the benefit he can possibly derive from a disclosure of the fact -

Not necessary to disclose facts which the insurer ought to presume - Ex. Insurance on a ship taken in battle immediately after capture & no statement of the amount of damage sustained For the Insurer must presume that she was damaged & therefore must inquire as to the degree of it - or he waives the information - Mar 356 - Emmergen 172.

If the risk is increased by a foreign ordinance unknown to both parties & which neither is bound to know the policy is good - In such case the in-

Insurance

= Insurer takes the risk (ante 75) Mar 323-52-6-
7- Park 195-4-

Insurance is the Capture of a fort abroad. The
speculations of the Insured upon the probability
of an attack on it - not disclosed - Policy holder
fores - Mar 357-52-3 Dur 1905. 1 Bl R 593- Park
183-193- In this case reasons of state operate
vs any disclosures - I think this kind of In-
surance ought not to be allowed. vs policy of
the Law.

Ship's Sea Worthiness &c.

From the very
nature of the contract there is an implied stip-
ulation, or warranty on the part of the
insured that the vessel at the time of her de-
parture is sea worthy - Mar 365-73. Park 220.
30- The rule holds whether the insurance is on
the vessel or on the goods on board.

Principle of the Rule. That the insured ought
not to recover for any loss occasioned by the in-
ternal defect of the subject insured - Mar 313-
Park 220-

66, Hence if the Ship proves to have been incapable
of performing the voyage from any latent defect
not occasioned by any peril insured vs but existing
before the voyage commenced the Insurer, are dis-
charged (ante 59) Mar 367-73- Park 220-230.
Policy is void - I

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The warranty implies that the ship shall be tight & staunch - properly manned - provided with all necessary stores & in all respects fit to perform the voyage - & with the proposed cargo. Mar 303-4-7
For tight & staunch see Mar 304. ante 26-

And when a ship is found incapable of proceeding on her voyage she is deemed to be defective unless the incapacity appears to have been occasioned by sea damage or some unforeseen accident - viz by one of the perils insured against. Mar 305-77. Park 230-

If then a ship is lost or is unable in the course of the voyage to proceed & this can not be ascribed to ship of weather or any accident the presumption is that she was not sea worthy at the time of her departure - & thus it is incumbent on the insured to prove the contrary. Mar 307.

And she must be fit for the trade in which she is employed - otherwise not sea worthy. Mar 307.

If the ship was not in a condition at the time of her departure to perform the voyage - the owner ignorant of the fact will not excuse (avail) him - nor will any degree of care to make her sea worthy. The policy is void - Mar 308-9-72. Park 230-5 Dun 2804.

So both the owner & the captain believing her to be sea-worthy - & the insurer knew her condition as well as the owner.

Insurance

When goods freighted sustain damage in the voyage thro' unseaworthiness of the Ship at the time of her departure, the ship owner or master is liable for the damage & not the insurer (Mar 156-7-9 - 372-3. 1 Vent-190. Ray 220-

But if sea worthy at the time of departure & rendered defective afterwards by stress of weather (or other peril insured ag^t.) the Insurer only is liable Mar 156-9-372-3. For the warranty of sea worthiness is complied with & she is in a suitable condition for the voyage at the time of departure - Mar 373-
(In case of barratry both would be liable in case of neglect)

Defect appearing soon after sailing affords presumption of defectiveness at sailing & throws the onus on the insured.

If the ship sails in a place of difficult navigation without a pilot. The insurers are discharged it is in the nature of unseaworthiness Mar 373-4-752 160. 1 Cont. R 487 - Williams & Grant &c.

(79) If goods are to be transported in a ship named in the policy & the ship is changed without necessity & without consent of the insurer he is discharged - Mar 162-3. 220 - Park 290. 20 - Burr 357 - Stra 1248. 1702 611-

It is an implied condition that the voyage shall be performed in that ship. If there is consent or necessity she may be changed without any clause in the policy to warrant it - Ante 30-49-

And if the proceeds of goods saved from a wreck during the voyage & sold - be put on board another ship the proceeds will be protected by the policy. Mar 377-8
1502 111 - 20 warranted by necessity -

If the ship becomes disabled during the voyage the Captain may & ought (if he can & if best for all concerned) to hire another ship & proceed with the goods. In such case the risk continues. Mar 578. 378-9-492
527. 1402 611 - Park 19-290-1-

In such case the Insurer is liable for every necessary expense occasioned by the change of the ship
Mar 379 -

If goods are insured on board any ship or ships the insured may change the goods without showing any necessity or consent ante 49 - Mar 221 - 379-80-2-3
274 DE 343 -

If two policies are effected on the same ground for the same voyage "in a ship or ships" - & for the same party & the goods be put on board two ships & those in one ship be lost - Scmb. that the underwriters on both are to contribute it being but one insurance in Law. Mar 115. 380-685-6. Park 280-1-1000 492.
132 2 416 - ante 23 -

It is if each policy is limited to the goods in one of the ships Mar 380-4-274 DE 345-9- And a declaration in writing by the insured of such limitation is good evidence of the fact. (807)

Insurance.

How to conduct the Ship.

There is an implied condition on the part of the insured that the ship shall be navigated & conducted according to Public Law Municipal Law.
 i.e. of the country to which she belongs - 37R 454. Mar
 390-1-122-53-4- Dory 238 Park 237- ante 7)
 & treaties between the state to which owner belongs &
 other states Port 68. Mar 122-385-9- 87R 192-71180-

If then the voyage is illegal or pursued in an illegal manner the insurer is not liable Mar 122-48-73-385
 77R 180. Ex. voyage in violation of the laws regulating
 or prohibiting the slave trade. or the laws of war - see
 Mar 385-91-48-73- ante 6-9-

Of Deviation.

Deviation is a voluntary departure from the usual course of the voyage insured -
 Mar 392-7-1B & P 313-

There is an implied condition in every policy (except so far as the public itself permits the contrary) that the ship shall proceed by the shortest & safest usual course to her port of destination. Mar 392-
 Dory 278.

Hence a voluntary departure from that course (i.e. a departure not occasioned by necessity) being a breach of the condition, determines the contract & discharges the insurer from liability for any subsequent loss.
 Mar 392- Dory 18- Pal 444- Beaw 315- 67R 531- Park 294-

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Note. a departure thro' the ignorance of the Master is considered as voluntary within the rule (sent) as it is not through necessity - Mar 445-6-

37 the "course of the voyage" is not necessarily meant the shortest possible way - or track - but the regular & usual one if there be such - Mar 185. 392-

Therefore touching at places out of the direct line in the course of the voyage, is no deviation if it be according to the usual settled practice - Such usage being supposed to be in contemplation of the parties - Mar 292. 3.251-182. Burr 346-1707-

But such usage can be established only by long & regular practice Mar 257. Comp 601-

Deviation does not vitiate the policy ab initio - but determines it from the time of deviating Mar 392.

3. Hence if a ship after sustaining damage deviates & is thus lost - the insurer is then liable for the damage first sustained (aliter if she sailed on a different voyage (ante 53) but not for the subsequent loss & he has a right to retain the whole premium - Mar 293. 548. Sal 444 - L^d Ray 840.

3 Burr 1240-211008 - Bory 454. Comp 608. 1 Show 150.

If a ship having liberty to touch at one port named in the policy puts into another equally near tho' not named (i.e. equally near her course) it is a deviation - Mar 394- (82)

Insurance.

If there are several ports of discharge named in the policy - they are to be visited in the order they are named - If the ship goes to them in a different order she deviates & discharges the contract -

This rule is founded on the presumed intention of the parties - Mar 295-b- 672 531 -

If the voyage embraces several ports of discharge not specifically named in the policy they must be taken in geographical order - Ex. From N.Y. to the ships ports of destination in the Mediterranean Mar 296-7- 672 523 - In such cases the voyage terminates at the most distant port of discharge -

In either of the above cases if the ship is obliged by necessity to change the order in which or this is no deviation - Mar 188- 292-7 408- 594 - 15+0 200. 313 -

Liberty to "touch & stay & trade" at any ports or places extends to ports & places only within the usual course of the voyage - Mar 186- 298-9 - 413 - Reg 272 -

If insurance were made from N.Y. to Halifax with leave to touch at any one port in the U.S. - this means an intermediate port - not one South of N.Y. - Mar 297 -

83)

If a letter of Marque insured. cruizes in quest of prizes - it is a deviation - This is not a case of necessity But giving chase to an enemy that comes in her way is no deviation - Mar 402 - Peak 315 -

Insurance.

Any unnecessary delay in commencing & prosecuting the voyage is of the nature of a deviation & has the same effect - For it increases the length of the risk. It is an implied condition that the ship shall proceed with reasonable expedition (ante 35) Mar 405 - Park 383 - & owner in an action so the Ship owner or Master may allege the agreement -

A deviation is generally the result of a project formed after the commencement of the voyage. And in all cases of deviation whether actual or only intended the termini of the voyage are the same as those mentioned in the policy (ante 53 - Mar 230 - 2406 - Long 18 - 274 DE 348 -

But where the voyage originally intended is different from that described in the policy - it is a different voyage from that insured - not a deviation - Mar 231 - 274 DE 314 - 343 -

A deviation intended but not effected does not discharge the Insurer - As if in the last case the Ship had been lost before arriving at the dividing point - Mar 231 - 406 - Stra 1249 -

This rule holds where there is a subsequent intention to deviate not executed - But if there is a previous design on the part of the insured to touch out of the course of the voyage (as in 274 DE 343) the policy is void on the ground of fraud & misrepresentation of the voyage Mar 228 - 9 - 30 - 1 DE 2463 - Long 16 - (84)

Insurance.

But when the voyage originally projected & begun is different from that described in the policy the contract is void ab initio. Here the actual voyage commenced is not insured. Mar 229. 236-407-8. Long 15- 7 DR 162- 2030- Park 299-

And whatever was the original design, if the ship actually sails on a different voyage the insurer is discharged Mar 230. 272 30.

A deviation can never be justified. tho' in some cases a departure from the direct course of the voyage is justifiable & does not discharge the insurer Mar 408. These are cases of necessity Mar 347-

The Causes which justify such departure.

1. Ship of Weather.

As when a Ship is driven from her course by a storm (Mar 409. 152 22.) Actus Dei.

This is sometimes called a "justifiable deviation" sometimes "no deviation". it not being voluntary.

In such cases she is not bound to return to the point from whence she was driven, but may make her best way to the port of destination.

(85) And it is a general rule that if the Capⁿ. in departing from his usual course acts fairly and according to the best of his judgment - for the benefit of all concerned with a view to proceed in the shortest & safest practicable

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Course to the port of destination - the voyage is prescribed by the policy. Within the spirit of the policy
 Mar 188. 408. Bun 347.

2. Want of Repair -

Want of necessary repairs during the voyage is a sufficient cause for departing from the direct course - but the ship should go to the nearest convenient place for that purpose
 Mar 410. Ath 545. Park 301.

3. To join Convey -

This is regulated by Usage (ante 61-3. Mar 255. 265. 412. Sal 445.

4. To avoid an enemy Mar 412.

5. Muting of the Crew. by which the Capt.ⁿ is compelled to depart - Mar 412. 13. 447. Stea 1264.

In all these cases the extent of the departure must be limited by the degree of necessity Mar 412.

And the new course thus occasioned by necessity must be so pursued - as to reach the port of destination in the shortest safest track - Any unnecessary deviations from such a course will discharge the Insurer - Mar 413. Dory 271.

Insurance.

Of Loss.

For a list of perils usually insured against see Mar 414 - 712 - 714 -

871. Every Loss is partial or Total.

A total loss may be either an absolute destruction of the subject named - or such damage to it - as renders it of little or no value - or if by any misfortune the voyage is lost - or not worth pursuing - or if further expense is necessary & the insurer will not engage to bear it - the Insured may consider the loss as Total -

The voyage is considered as not worth pursuing - when the value of what is saved is worth less than the freight
Mar 415 - 479. 493. 500. Part 98. 143. 3 Atk 135.

(Where the loss is of the voyage one (the subject not being damaged) or where the subject tho' damaged retains some value - the recovery can not be as for a total loss unless there has been an abatement -
Part 109. 110. 115. (Mar 479. 482. 500)

A Partial Loss. Every loss short of total is a partial one. If a ship insured for a voyage - reaches her port of destination & is there safely moored 24 hours any damage she may have sustained is a partial Loss - (Part 114) Mar 415 - 503 - 172 187 -

So if insured for a Term (& she survives - (96)

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If goods insured specifically remain & are actual-
-ly landed at the port of delivery, any damage
sustained by them, however great is but a partial
loss. Mar 415. Park 101. Burr 1172.

Partial losses are sometimes called average losses. be-
-cause they often occasion average contributions -
Mar 142. 415. 461. Park 98. 9. (Anti 28).

Losses are considered with reference to their immediate
causes, & are of various kinds.

I. Loss by the perils of the sea - These in the limited
sense of the words, are such only as proceed from
sea damage, as Tempests - Waves - Lightnings - Rocks
Islands &c including only a part of those which
are covered by the Common Policy - (Anti 26. 31.) Mar
131. 415. Park 61.

Note - in the comprehensive sense of the term they
include all perils to which sea voyages are ex-
-posed. These perils then in the more limited sense
include foundering - Stranding - Wrecking or Rocks &c
Mar 415.

The insured must of course in some manner
prove the fact of a loss. In some cases he may do
this by presumptive evidence -

A Ship not heard of in a reasonable time is
presumed to be foundered - & the insured may
recover as for a loss & by sinking - (Post 17) Mar.

Insurance

411-17-516- Stia 1199- Park 69-4-

No time is limited by the English Law for founding the presumption - It rests upon probabilities & each case depends upon its own circumstances -

Mar 418. In Strange 1199- the period was 4 years - b2R b56.

(88)

Destruction of the ship by worms is not a loss by the perils of the sea - Mar 419. 1 Esp 444 - 20 Selw 713 -

For any diminution of the value of the ship occasioned by ordinary service - the insurer is not liable. Same if occasioned by extraordinary accident.

(ante 26. Mar 420. 416-131- Park 61- Comb 51-

If animals insured die by natural disease the insurer is not liable for them - Same if thrown over in a storm or killed by a shot &c &c when their death is occasioned by any peril insured against - Mar 420 -

II. Losses occasioned by running foul of another ship are within the policy when not occasioned by the fault of the master - or mariners of the ship - (Mar 620) insured -

When so occasioned (as by neglect or mismanagement) Marshall considers the loss occasioned by barratry & the insurer liable - Mar 420-1.

2d. When no fraud is meditated by the Owners -

no man

Can it be barratry? Mar 301-442-

At any rate the Master by whose misconduct the
Lop was occasioned would be liable for it - ante 30 -
Mar 157-9. 421- Went 190-238- May 220-

III. Lop by fire - Without any fault of the Master
or Mariners is within the common policy Mar 421-

And if the property is burned thro' the fault of the
Master he is liable as under the last head - But -
the Insurer is not - I trust unless the master mis-
conduct amounts to barratry - Mar 421. 139th 451-

IV. Lops by Capture - Whether made by enemies
or friends & whether lawful or unlawful - the
insurer is liable - Mar 422. 3-

If the property insured being captured is never restored
or recovered - the Lop is of course total - If recovered by a
Recapture or otherwise before abandonment - the Lop
is partial Mar 422-3-

1. In the latter case the Insurer is bound to pay the sal-
-vage & all necessary expenses incurred in recovering
the property - Mar 423-459. Ex. Dawson paid or money
paid for services done -

The Insurer is liable for a Lop by Capture whether the
property in the subject named is changed by the
capture or not - And whether carried into any hostile

Insurance

port- or not- For whether the property is changed or not
 & whether the capture is lawful or not- the loss to the
 insured is the same (i.e. while the detention continues)
 as in case of capture by a Privateer, or when there
 is no war - Mar 423 -

(90)

As between the Insured & the Captor (or his receiver
 or Vendor) these questions may be material, but
 not as between the Insurer & Insured Mar 423
 Ex Capture by a privateer - Insurer is liable

And capture is always & prima facie a total loss -
 or rather it is always so regarded for the purpose
 of enabling the insured to abandon to the Insurer
 & thus recover as for a total loss - Mar 423-g-483-
 4-7- 490-3- 1 Polins Cas 147- 151- 4 Dal 446- 4 Crauch
 29- 46 - 3 Masf 338- 4 " 88- 91- 6 " 479- 482- 10 East-
 329 contra if the loss proves eventually partial
 tho' there were a prior advancement - during the
 detention port 93- 109- 120- 10 East 384 n -

It is said in Gaming insurance the question whe-
 ther the property was divested or not by capture
 might (while such contracts were deemed lawful)
 have arisen between the Insurer & insured in an
 action on the policy - there being no real interest
 to be forfeited or restored & no benefit of salvage.
 Mar 123 -

It has been resolved however even in these cases
 capture is deemed a total loss - as in case of ac-
 tual interest - Mar 424- 6- Burr 695- Com B 361-
 170 ib 191- Stw 1250- Park 77-

As to the question. In what time. or under what circumstances the property in the thing captured is by the Law of Nations changed. there have been various opinions.

(91)

Thus the property of the owner has been said to be divested & transferred to the Captor on the thing's being brought within the protection of a fortress of the Enemy or into his harbor. or 24 hours in his possession. Mar 427-8-81-92. 10 Mod 74. 2 Burr 635.

The rule adopted in the English Courts is that the original owner is not divested of his property in the thing captured till condemnation by a prize court (post 107) Mar 428. 73-92-3. Burr 695-11 Mod 79-

This is the rule in the U. S. Vide Wheaton's Selw.

Now capture then does not change the property & even after a capture & possession by the enemy for 9 days. for 14 months. & for 4 years without condemnation restoration to the original owner has been decreed by a Recaptor or remainder of the Original Captor. (16)

Whenever a Ship is captured the insured may abandon (i.e. relinquish all his interest in the subject to the underwriter) & claim for a total loss. But he is in no case bound to abandon. Mar 414 429. 475. 506. Burr 696. 3 DR 479 or 497-

Insurance

- (92) No capture by an enemy is of itself (i.e. without condemnation) a total loss - in such a sense as to preclude the possibility of recovering the property except in the case of a captured ship - converted into a Ship of War by the Enemy (post. 107) Mar 429-74-92. Burr 1198. 1862 276.

If therefore the Owner retakes the property captured he will be absolutely entitled to it - & if it be recaptured by another before (or in Eng^d by Stat 29 Geo II. after) condemnation the owner will be entitled to restitution upon payment of Salvage Mar 429-492-3-

By the Public Law property thus retaken belongs after condemnation to the Recaptors - or rather the Government bestows all or most of it upon them (H.) -

The Owner's right to Restitution is called "jus post liminii" - which by the general Marine Law continues till condemnation - After which a recapture would entitle the recaptors to the property on a sentence of condemnation in their favor - But by the Stat 29 Geo II. it continues in case of Recapture forever. Mar 429. 492-

In case of Recapture if the Insured has abandoned the Insurer stands in his place - i.e. has the benefit of the "jus post liminii" Mar 429. For the abandonment transfers all the interest of the insured in the property to the Insurer -

The first of these is the fact that the
 human mind is not a blank slate at birth
 but is filled with a vast amount of
 information which it receives from the
 world around it. This information is
 stored in the memory and is available
 for use when needed.

The second fact is that the human
 mind is capable of learning from
 experience. This is done by comparing
 new information with the information
 already stored in the memory and
 making adjustments as necessary.

The third fact is that the human
 mind is capable of reasoning. This is
 done by using the information stored
 in the memory to draw conclusions
 about new information.

The fourth fact is that the human
 mind is capable of imagination. This
 is done by creating new images in
 the mind which are not based on
 actual experience.

The fifth fact is that the human
 mind is capable of emotion. This is
 done by feeling a response to the
 information received from the world
 around it.

In case of Recapture to the Insured - the Insurer^r (93)
is bound to pay all the necessary expenses of the
recovery whether the original capture was legal
or illegal - as a sum of money paid bona fide
to the Captors on a compromise to prevent con-
- demnation Mar 429-31- 1862 313-

The Owners chance of Recovering his property
does not suspend his demand upon the Insurer
as for a total loss. But then on a Recapture
the Insurer stands in the place of the Insured
(ante 30-92-) Mar 429-

Ransom:

By the Law of Nations property captured by an
enemy may be ransomed by the captured party.
This is effected by a Ransom Bill which secures
to the Captor the price agreed on. & operates as a
Bill of sale of the property to the original owner
& protects it from other Cruizers of the enemy
during the voyage - This is to diminish the horrors
of war -

A Hostage is regularly delivered to the Captor to
secure the stipulated sum. Mar 431-2-7-68. 37-
Long 619-4.8.9- 648. 3 Dan 1734- 1862 563 or 536- 6723-
The bill is signed by the Captain of the captured ship
& hostage -

The Contract is binding by the public law on the (94)
Owners as well as the Captain & hostage. And if the
property is insured - the Insurer is regularly liable for
the amount of the Ransom. Mar 432-

Insurance.

But a suit lies not upon it - in the State of the Captured party till the end of the War & then only in a prize Court as the Law now stands -
Mar 432 - 608 - Dony 648 -

And a promise by the Captain in behalf of the Owners to pay wages to a seaman for becoming a hostage binds the Owners - 15R 73 -

But the Ransom of British Ships captured is now prohibited as illegal & the Contract declared ab-
- solutely void by Stat 22 Geo III. c 35 - Mar 432-3 -

Arrest & Detention.

(95). By the established form of Policies the Insurer is liable for all losses occasioned by "any arrest or detention" under the authority of any "Prince" or public body exercising sovereign power un-
- der any pretence whatever - As by the Sovereign of the State to which the Ship belongs or any other sovereign in amity with him from mo-
- tives of necessity or policy & not of hostility.

Different from Capture - the object of the latter is Prize - that of Detention is not so - Mar 434 -

Hostile detention in port after a declaration of War or letters of Reprisal by or ag^t the so-
- vereign detaining is strictly a capture & war-
- rants an immediate abandonment - as for loss by Capture - It being a detention for the pur-

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= pore of making prize - Mar 434 -

"Arrest of Princes" may take place at sea as well as in port - if done from public necessity & not with a view to plunder. Ex. Seizure by government of a Neutral Ship with a cargo of provisions for the relief of a place suffering by famine with intent to the provisions. Mar 134-5.

But if a Neutral is taken at sea as Enemy's property (96) = cargo or as being laden with enemy's goods. the arrest is a capture and act of hostility - & a subsequent restoration will not change the original character Mar 435.

But if Neutral property is seized - tho' unlawfully for an alleged offence agt. the Law of Nations this is only a "Restraint of princes" - Mar 436. 303. Peak 363. not the act of an enemy -

But if a ship is seized for violating the Law of a foreign state which she was bound to obey this is not a "Restraint of princes" - It is an arrest for misconduct which may amount to Barratry in the Master. Mar 435. 2 Burn 176.

The most frequent cause of such detentions as are termed "arrest of Princes" is an Embargo - this whether legal or illegal is a risk within the Policy. Mar 436. 3 Inst 162 4 Mod 177-9 - Crox 704 1 Burn 696. 100 R 270 -

By the word "people" (in the phrase arrest of princes or people) is meant not a mob or rabble - but a people or nation - or rather the ruling power of a country - Mar 147-436-593-617-472 783 - Park 78.

(97)

Hence if a Ship is seized by a lawless rabble - the loss is not deemed a loss by detention of a people - but by pirates - Now Unless the act is done on the high seas? If not the loss is by robbery - I conclude - If the seizure is committed in port by fresh water pirates it is not committed by pirates within the legal meaning of that word - (16) -

But if a Ship is arrested by authority of the Government of the State to which she belongs - or of a state in amity with it from state necessity - the detention is within the clause last recited - (viz) "arrest of princes or people" - Mar 437-8. L' Ray 640. Sal 444 -

If a Neutral Ship insured at & from a belligerent port - is detained by an Embargo in that port - the detention is deemed an "arrest of princes" within the policy & the insured may abandon - Mar 439. 86-8. 38. 672 425 -

A seizure made after the execution of hostilities & preliminary articles of peace - by one of the parties to the articles - is an arrest of princes - not a capture - Mar 441. Oca 316. The powers not being actually at war at the time - [In the case Mar 441 - the ship had been restored - did that alter the case? It must not - See last page & Mar 435 -

Loss by Barratry -

(98)

Another loss within the Policy is that by Barratry -

Barratry is defined to be any species of fraud - known - very or deceit - committed by the Master or Mariners - to the injury of the Owners -

As by Running away with the Ship - Willful deviation - to defraud the Owners - Sinking or deserting the Ship - Embezzling the Cargo - Smuggling - or any offence by which the property may be subjected to arrest - detention - loss or forfeiture -

Even dropping anchor with a view of defrauding the Owners is an act of Barratry - Mar 301. 458. 442 456. 595 (ante 67) -

It seems sufficient however to constitute Barratry that the act of the Master be unlawful & that its probable consequences will be injurious to the Owner - 5 Bay 1. 8 East 126. 6 D R 383. 2 D R 574. 81 -

It comprehends every fraud that may be committed by the Master or Mariners against the Owners.

(10) Hence an allegation of Loss "by the fraud & negligence" of the Master was held to be a sufficient averment of Loss by Barratry - (120.) Mar 443-5 595. 1 D R 323 - 2 D R 1349 - Stea 581 -

By the Laws of some Countries - the Ship owner (who appoints the Master & selects the Crew) can't be insured ag^t their misconduct - But by the Eng^l & our Law such insurance is permitted & is now in full effect as of course in every policy - Mar 442. 5. Stea 1264

1173. 581. Corp 143. L^d Ray 1349. 17R 323. 252. 77R 505. 396
37R 277. 4" 37. - 1" 252. 8" 126.

Barratry is now a common hazard, but the Insurer is not liable for it - except by express stipulation in the policy - 17R 252. 377. 4" 37. (It) -

And the Captⁿ may be insured against the Barratry of his Crew - but not against his own - Mar 445.

99)

No fault of the Master or Mariners amounts to Barratry unless it arises from an intention to defraud the Owners of the Ship - It even a deviation not fraudulent (as if it is occasioned by the ignorance or unskillfulness of the Master) is not Barratry - Mar 445. 6-9. 17R 323. 77R 505.

Barratry may be committed by the Crew it seems without the concurrence & against the will of the Master but not unless the act is intended to defraud the owners - Mar 445. 447. Stra 1264

But when a Captain of a letter of Marque cruized in quest of prizes in violation of his orders his conduct was holden barratry - tho' he intended to benefit the Owners - it being a breach of duty towards them - Mar 448-9. 195. 17R 379. 2m.

Barratry being an offence to the Owners of the Ship cannot be committed by them or with their

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consent. Tho' they may by their misconduct make themselves liable as Carriers to the Owners of the goods on board Mar 449. 52. - Str 1173 - 17R 123 -

Never if the same person is both Owner & Master he cannot commit Barratry -

But a gen'l freighter is considered as Owner for (105) the voyage & hence a deviation without his knowledge, tho' with the consent of the Original owner may be Barratry. As where the Owner lets out the Ship, to carry freight generally as for a voyage a year Mar 454 - Com 143. Gen'l freighter has the control of the Ship as Owner.

Secus if there be only a covenant by the Owner to carry goods for another - the former would then have the direction of her -

Suff' for the Insurer to prove acts of the nature of barratry by the Master - without proving negatively that he was not owner - or Gen'l freighter - If he was such Insurer may show it - by way of defence Mar 456-8. 617 - 49R 33 -

Tho' the insurance be only "in any lawful trade" - the Insurer is liable if the Captain engages in a smuggling trade on his own account as it amounts to Barratry Mar 458-9 - 37R 279 -

To subject the Insurer the loss must happen during

the voyage - tho' the Barratry was committed before the voyage was ended - The loss must be within the time of Risk.

101)

Loss by Average Contributions

The word "average" denoting a contribution towards a particular loss has been explained (ante 28).

The contribution is of course a partial loss to all who are subjected to it - Mar 142 - 460 - 3 Dun 1555. 1712 323. And by the general words of most policies the Insurers are bound to indemnify against this species of loss - Denominated General or Gross Average (H) -

Rule: When any loss is sustained or any expense fairly incurred by a particular individual to prevent a total loss of the Ship & cargo - the loss or expense is to be rateably borne by the Owners of the Ship freight & Cargo. Mar 461 - Beaw's 148.

'Particular average' means a particular loss & has no connection with average (properly so called) or contribution of any kind - Mar 142 - 146-2

"Petty" (or accustomed) averages are certain necessary expenses such as pilotage, light money - anchorage tolls - towage &c -

Insurance.

549

Those when incurred in the usual course of voy-
-age are not regarded as losses within the policy,
but as necessary & ordinary expenses, ^{But when incurred for any extraordinary purpose} as to provide
aft. damage - or in consequence of disaster -
They are deemed gen'l average & subject the In-
-sured - Mar 462 -

Owners are liable for gen'l average under the (102)
rule & the Insurer is of course bound to indemnify
in such cases as the following - If the goods of
a particular individual are thrown overboard
to save the Ship from sinking - Mar 460-1. 12 C 63 -

So if the masts - cable - anchors - or other furniture of the
Ship are cast away or cast overboard for the preser-
-vation of the whole - others must contribute - Mar 461-5.
1 East 220. Mol 62 c2. 86. (See if the loss of Masts is occasion-
-ed by ship of weather or casualty.

So if a composition is paid to a privateer or pirate
to save the property; or a ransom agreed to be paid to
an enemy - or damage sustained in defending the
Ship vs an attack or expense incurred in curing
those wounded in defence of the Ship - or in re-
-claiming the Ship & cargo after capture or defending
a suit vs her in a foreign court & obtaining a dis-
-charge - Mar 461. Show P.C. 19 - Dea 148. Mol 62 c2 86.

In such case where the loss is occasioned bona fide in prevent-
-ing a total loss - the owners &c are subject to a gen'l
contributions -

But the contribution can be enforced only when the sacrifice appears upon such deliberation as the case admits of between the officers to have been absolutely necessary to the preservation of the ship & cargo.

Mar 462 - Ocaso 148.

So only when the sacrifice or loss appears evidently to have conduced to the preservation of the Ship.

103- Mar 462-3. Hence if a (^{Pirate} private person) having captured the ship takes only the goods of a particular person there is no contribution. Mar 362.

So if goods of a particular person only are damaged in a storm - Mar 462-3-297-

So if particular goods are landed to avoid capture & the rest taken - no contribution from the owner of the former. For the capture of one part is not the means of saving the rest. Mar 463. Show Par C. 20.

So if the Ship & rest of the Cargo are not in fact saved by the sacrifice of part. Thus if goods are thrown overboard in a storm to save the ship, & the rest of the cargo & the ship is still lost in the same storm - no contribution. Tho' other goods are saved. By throwing the first overboard. For they are not saved by throwing the first overboard.

Insurance -

But if the Ship is thus preserved & afterwards lost - from a distinct cause - the effects ultimately saved must contribute - because they were once saved by the "jettisons" -

So if goods put into lighters to enable a ship to go up a river - if a bar or are lost - the Ship &c must contribute - the goods were removed for the gen'l benefit - But if the Ship is lost - the goods in the lighters do not contribute - not lost for the preservation of the goods in the lighters - Mar 462.

In case of an unjust capture & detention the wages & expenses of the ship's company (as well as the charges of reclaiming her) are to be brought into gen'l average - Mar 464. Dea 150. (for the benefit of all)

So when a Ship is obliged in consequence of a storm to seek a Port to repair - wages & every other expense (from the day of her resolving to seek a port to the day of leaving it) incurred by the same necessity are brought into gen'l average - The expense being incurred for the safety of all concerned - (Park 125. 27R 407.)

Also if the necessity of repairs was not occasioned by any extraordinary accident - (Mar 464. Park 125.)

It is a case of unseaworthiness - Loss does not arise from any peril insured against -

No injury occasioned by mere sea damage is a

Insurance

Subject of gen'l average - Not incurred for the preservation of the whole concern - Ex Goods injured by Ship's springing a leak - no contribution -

But sacrifices of ship's tackle & extra labor hired to preserve a ship & cargo are the subject of average contribution by the Owner of the Cargo & the Ship owner may have an action at Law vs him to recover it - Mar 465 - 1 East 220 -

Rule - the ship's freight & every thing that is deemed part of the cargo are subject to average contributions even money - plate jewels &c when a part of the cargo - Silver of ornaments on the person - Seamen's wages - Mar 466 - 326 - 276 407 - Mol 62 66 - 84 -

105)

It is the Captain's duty to adjust the contributions which may be demanded before the Cargo is landed for the Ship owner when entitled to a gen'l average have a lien on the goods on board for average contribution as well as for freight Mar 466 - Hen 148. Mol 62 66 52 -

If the Captain neglects his duty an action it seems would lie vs him or his owners by each of the sufferers - or action would lie vs either of the parties liable to contribution - A bill in Equity vs all of them would be a more eligible remedy - Mar 466 - 7 - Show DC 19 - 1 East 220 -

In settling contributions - the property lost must itself

be taken into the account - So that the owner of it may bear his proportion of the loss - The whole value is not to be reimbursed - Mar 476 - (21) -

As to the mode of ascertaining each persons contribution - see Mar 467 - The Rule appears to be that each person's share of the eventual loss must be in the same proportion to the real value of his property (at the Port of Discharge) as the whole loss bears to the whole net value of ship cargo & freight - If this proportion is 25:100. contribution is in the ratio of 25:100. of value of his property - Mar 467 - See Port 125.

In this estimate the freight is valued at the clear or net sum which ship has earned. after deducting the seamen's wages & all the charges, called "putty average" of these two latter the cargo bears $\frac{2}{3}$ & the Ship $\frac{1}{3}$ - Mar 467 - 8.

The "jettison" (or property sacrificed) is estimated (106) at the price which it would have brought (if sold) at the port of delivery on the ship's arrival there after deducting freight duty & other charges - Mar 468.

For all the average contributions the Insurer is bound by the gen'l words of the Policy to indemnify the insured & to reimburse his part of the contribution & this whether the Insured has paid towards them or rec^d. towards them - in either case he has maintained a loss which falls eventually on the Insurer. Mar 468.

Salvage -

(107)

By one of the usual clauses (ante 55) in Policies the Insurer is liable for the expense of Salvage - Mar 239 - 469 - 712 - 14 - i.e. the allowance made to those by whose means the property has been saved in case of disaster - ship wreck - fire - pirates &c (see ante 55)

Salvage in some cases also means the property saved Mar 409 - (It is used in these two senses indiscriminately in all the Treatises of Law - & the connection governs the meaning)

Those who have saved goods from such perils have a lien upon them for a reasonable salvage & may retain them till paid Mar 469 - 1 L^d Ray 343 - Sal 654
There is a class of men ~~of~~ Coast called Wreckers whose business it is to save Cargo wrecked - They are entitled to Salvage - So too are Recaptors. Mar 469 - 269 - 712 - 14. Hence Recaptor's right to libel Ship -
As to the Amount of Salvage -

The mode of ascertaining it & enforcing paym^t. of it - Different rules prevail in diff^t. Commercial States - In Eng^d it is regulated chiefly by Stat Law - particularly Stats of 12 Anne c 1852. 26 Geo 2^d & 33^d Geo 3^d - see the Stats Mar 469 - & 474 -

In case of Capture & Recapture the property was by the Marine Law restored & the Recaptors entitled to a reasonable salvage - if the recapture was before condemnation - otherwise neither salvage nor restitution - ante 91 - 2 - or 21 - 2 - The Ship captured is lawful prize to the Recaptors - But by Stat 33^d Geo 3^d English prop^y captured & recaptured at any time is to be restored on paym^t. of reasonable salvage - Except when cap:

Insurance -

armed Ship has been converted by Captors into Ship of War. If so. she is lawful prize.

In cases not within the exception - the property ~~rests~~
upon the recapture vests in the original Owner,
pledged for the Salvage - Mar 463 - 2 Burr 1198 - 15 CR
276 -

In declaring upon a policy to recover salvage paid
the Insurer does not allege a loss by payment of sal- (108)
- vage. but a loss by the particular cause which
occasioned the disaster. Under such allegation he
may recover the salvage - actually paid (post-140) -
Mar 474 - 595. 619. (Note the policy contains no par-
- ticular engagement to pay salvage *ex nomine*)

In cases not within the above Statutes (as the case of
neutral property recaptured) the Eng Ct. of Admiralty
has a discretionary power to regulate the rate of Salvage
Mar 474 -

To entitle the Insured to an action at Law on the
policy for a loss by paym^t. of Salvage - the amount
of the Salvage must have been previously ascertained
by the Court of Admiralty which alone has original
jurisdiction over the question of the right of Salvage
& (in cases not within the English Statute) of the
amount also - Mar 475 -

When the Salvage is very high the Ins^r may
abandon & claim as for a total loss (post-110 - Mar
475 - See too in case of Recapture -

Insurance.

Abandonment.

(109)

In all cases of Total loss (anti 86) when the subject is not absolutely destroyed - the Insured to entitle himself to recover as for a total loss must abandon or yield up to the Insurer all his right or claim to what might be saved - that the Insurer may make the most of it for his own benefit - Mar 414-79-82-500-6-1702 65-6.3 ~~At~~ 195-

But the right of abandonment exists in part only while the loss is deemed total - (part 114)

The Insurer then stands as to what is thus saved in the place of the Insured - i.e. he is entitled to the whole of it as his property - The abandonment operating as a transfer of it to him - (anti 92) Mar 479-

When the subject is totally destroyed an abandonment would be nugatory & could have no effect - As there is in such case no subject to be abandoned - Abandonment is of course unnecessary - Mar 479-

As to what amounts to a total loss (so as to warrant abandonment) See anti 86.

The most frequent grounds of abandonment are capture & "Arrest of Prizes" Mar 483.

Capture by an enemy or pirate - or an arrest of prize - or - as detention by an Embargo is *prima facie* a total loss - And immediately upon capture, or at any time

while the detention continues - the insured may abandon - giving notice to insurer of his abandonment -
 Mar 423 - 9 - 83 - 507 - 2 Barn 696 - 1 Esp Ca 237 - In 10 East - 289
 holds that if the loss proves only partial (as if the
 soon recovers & is able to proceed & the voyage is worth
 pursuing) the insured can recover only for a partial
 loss i.e. the actual loss (ante 90 - Post 120) -
 this seems to qualify this original rule.

In the case of a total policy (i.e. a policy without (110)
 interest) there can be no abandonment - For there
 is no subject to be abandoned / Hence the clause in
 such cases "without benefit of salvage" (ante 18) applies
 upon a policy on interest - the insured may abandon
 the moment he has notice of a capture & And this
 will bind the insurer whatever may be the ultimate
 fate of the ship - See vide ante 90. 109. post 120. &
 10 East - 339) Mar 106. 484 - 17th 384 - ante 18 -

But a capture does not necessarily result in a total
 loss so as to warrant an abandonment - For the insured
 can abandon only while the loss is deemed total - Hence
 if on receiving notice of the loss capture & he also
 receives at the same time advice of the recovery of the
 subject - he cannot abandon, Mar 484 -) i.e. he cannot do
 it merely because of the prior capture -

Still if there is any additional cause of abandonment
 as if the goods recovered become spoiled - or the voyage is
 lost from other cause - Mar 485 - 1. 493 - 9 - 501 - 4 - 2 Barn
 1199 - 3 11th 195 - 10 Cl R 276 - 1 Esp Ca 237 -

Insurance -

On the other hand a right to restitution on recapture - does not necessarily oust the right to abandon - the recapture notwithstanding - For still if in consequence of the capture the voyage be lost - or not worth pursuing - or if the salvage be very high or if further expense be necessary & the Insurer will not engage to pay it - the insured may abandon
 Mar 479 - 82-4-5-499-500 - Park 98-3 Nth 195-

Rule - If after recapture & before abandonment (post 102 the subject be recovered before any loss paid - the insured is entitled to claim as for a total loss or partial loss according to the state of the case when he makes his claim (For if he has not abandoned (when he has a right to abandon) he has no vested right to claim as for a total loss but only for his actual loss as it stands at the time of action brought - or subsequent offer to abandon) Mar 485-501. 10th ca 237- Ex. Recapture before any offer to abandon - insured recovers $\frac{2}{3}$ of the property - he can recover on the policy only $\frac{1}{3}$.
 See Auth' sup & Ex ante 12 -

(111)

But after a total loss paid - in case of capture - if the subject be recovered the Insurer cannot oblige the Insured to refund - but will stand in the place of the Insured - taking the property restored to himself Mar 485-497. 2 Burr 1198. 10th 276- The payment being voluntary & no fraud or mis- take it cannot be recovered back - At the time of payment the loss was total in contemplation of Law.

And a right of restitution arising upon recapture cannot defeat the right of abandonment created by the capture - if the ship is unfit to finish the voyage - Mar 487- 2 Dun 683. For the voyage is lost - (Ante 110)

The insured may abandon upon a mere arrest or embargo by a prince not an enemy - Mar 448. 2 Dun 683 - *Griffin v. Widdow*

But where a capture proved but a small temporary hindrance (as if the ship is immediately ransomed & pursues her voyage) the insured cannot afterwards abandon - Mar 489 - 2 Dun 683 -

And he is in no case bound to abandon, Mar 487-94.

Dun 1198. 10 L R 276.

If there is any salvage whatever he may retain it & recover as for a partial loss.

He cannot by abandoning ^{turn} ~~this~~ a loss which the Law deems partial into a total loss. Mar 489 - In such case there is no right to abandon -

It is not universally true that because a ship has been once captured - the insured may abandon at any time partial. For if the subject - before any loss is paid - is recovered the insured is entitled to recover only as for a total or partial loss as the case stands at the time of action brought or offer to abandon (Ante 110) Mar 423- 430-4-5- 501- 18 L R 237- (112)

Then - When a Ship was captured & after 17 days detention recaptured & sent to the country to which it was bound. The Insured is not allowed to abandon her after her arrival. The voyage not being lost & of course the loss not being deemed total at the time of the offer to abandon. Mar 491-6-501-3-83-2 Den 1198. 1 BCR 276. For the Insured can only recover an indemnity according to the nature of his case at the time of the offer to abandon. Mar 497-501-234-

If upon recapture the captain (being restored to the profession) sells the property bona fide - for the benefit of all concerned to pay the salvage - the insured may abandon & recover as for a total loss - For the voyage is lost. Mar 377-8-489-527-Long 219-

For the Captain in case of disaster has an implied authority to act according to his best judgment for the benefit of all concerned - & the Insurer is bound by such acts. Mar 378-500-Long 219-15R 611-

[113] If the Captain repurchases the captured ship as agent for his owners when she is offered for sale by the Captains - the purchase is a recovery of the ship for the Owners - & the price paid is deemed salvage. Mar 501-184-237-

And in such case if the voyage is worth pursuing & if there was no abandonment during the detention the loss is only partial - (It) -

Shipwreck is regularly a total loss of the Ship - By "Shipwreck" is meant the loss of the Ship by perils of the sea. Mar 502. In such a case tho' the wreck may remain & be saved - yet if the Ship is so broken - or otherwise injured as no longer to exist in its original nature - or character as a Ship - She is considered as lost - (Mar 502) So that quoad the Ship the loss is total -

And tho' the cargo in this case should remain yet if no other ship can be procured (by the captain) within a reasonable time - to carry it to its place of destination the loss as to the Cargo is also total - (ante 79) Mar 378-448-512-527- May 219- 172 611- Park 19-290-

But stranding is not of itself a total loss - If the Ship be got off & rendered capable of pursuing her voyage the loss is but partial & the insurer liable only for the expenses occasioned by the stranding - Mar 502. Aliter if the stranding occasions shipwreck or otherwise renders the ship incapable of pursuing her voyage - In such case the insured may abandon - (It) - (114)

To warrant an abandonment in any case there must have been at some period of the voyage - (& that the period of the offer to abandon) what the Law deems a total loss (ante 109) And no partial loss however great occasioned by perils of the sea - can be converted by the insured into a total loss. Ex. Insurance on a Ship - She performed her voyage but was so damaged as not to be worth repairing - the damage was 48 per cent. - holden to be only a partial loss - Neither the Ship nor the voyage being

lost - Mar 502-3 - 17R 187 -

So if she performs her voyage - arrives at her port of destination & remains there in safety 24 hours - the loss upon the Ship cannot be total - ante 86 - Mar 415 - 503 - 17R 187 -

(115) - So if a Ship insured for a given time is ever so greatly injured within the time - but not thus entirely lost - the loss cannot be total - Mar 503-4 - Park 106 -

So insurance on a privateer for 4 months - within that time the crew mutinied & carried her back to port & deserted - so that she was detained there beyond the 4 months - yet she was safe in port - after the period - The loss was held to be partial - Mar 504-5 - Willer 641 - 505 - P. C 131 -

But if the voyage be lost (as by sea damage) the loss is total - (ante 86) & the insured may abandon tho' the actual pecuniary damage done be in itself small - Ex - Insurance on Ship - cargo & freight - obliged to put back in consequence of a leak - repairing could not be obtained at the port & no other Ship to be obtained - Here the loss was held to be total as to Ship - Cargo - & freight - & abandonment allowed -

So if goods insured be so damaged as to be worth less than the freight - the loss is total - The adventure being

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entirely lost to the owner. Mar 144 - 486 - 507 - 531 - 571 - 1065.

Still the Insured would suffer more than if the property had been annihilated or sunk -

As to the time of abandoning -

(116)

Rule: - As soon as the Insured receives advice of a total loss - he must make his election to abandon or not - & if he resolves to abandon - he must give notice of his determination to the insurer within a reasonable delay - to do this is a waiver of his right to abandon - (Mar 508-9 - 511-12-13) He should do it by the first opportunity - Mar 510 -

Hence if the Insured does no act signifying his intention (where there is any thing to be abandoned) the loss will be partial whatever may be the extent of the damage - Mar 509 - 172 608 -

But this rule must suppose the subject or some part of it to be saved - or to remain - Otherwise there can be nothing to be abandoned - & the loss will necessarily be total - Mar 510 - 172 608 -

Till the insured are advised of a loss - or disaster no act of the master will prejudice their right to abandon - But upon such advice if they do not elect to abandon & give notice as above - they adopt as their own - the acts of the Master - or person acting for the benefit of all concerned - As in saving or recovering the property &c - In which case they

Insurance

waine their right to abandon - Mar 510-12. 27-30.
1502 648. Part 172. Ex. Capture & Recapture - the
insured on notice directs the proceeds of the goods
to be remitted to them - four months after this they
give notice of their abandonment. This is too late -

(117) So generally after once treating the loss as partial
they cannot abandon - Mar 513. Part 172 -

The Insurer cannot demand an abandonment
of more than they have insured. Nor can such
demand prevent the Insured from abandoning
to the amount insured. (And if the Insured re-
flects to abandon in season in consequence of
such demand - they cannot afterwards recover for
a total loss -)

Ex. On a Ship worth \$10.000 only \$5000. are insured
Captured - & the Insurer is willing to take the loss as to =
total if the insured will abandon the whole. Mar
513. 5. 872 248. He may abandon pro tanto (part-
119) i.e. to the amount of \$5.000.

This is a qualification of the rule - that the In-
sured must abandon his whole interest to the
insurer; which supposes the insurance to have
been for the whole amount. 872 248. Mar 513 515.

But if the Insurer in any way prevents the Insured
from abandoning - the Insured may claim the
whole loss - as if he had abandoned - i.e. to the am^t.
of the sum insured - as when the Insurer dis-
suaded the Insured from abandoning the Ship

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(the being damaged) by offering & ordering repairs & afterwards refusing to pay for them - So that the Ship was sold to obtain payment - Mar 516-252407-

If a Ship after sailing is not heard of in a reasonable time the insured may abandon - A total loss being presumed - Arts 87- Mar 416-516-7-Stein 1199. Park 63-4-

If the Insured would abandon he is not obliged to (118) make a protest - but only to give notice of the loss to the insurer & of his determination to abandon - Mar 517-

No particular form is prescribed - in which an abandonment must be declared - but whatever may be the form it must be explicit & not left to inference - (It & Esp 72) -

It may be given either to the Insurer himself - or to the agent who subscribed for him - Mar 513 -

When the insurance is entire either upon the whole of one subject - or upon different subjects in the aggregate - i.e. not separately valued - the insurer cannot sever them in abandonment - but must abandon all the subjects - or not at all - Thus if Sugar & Cotton are insured in an aggregate sum (as \$1000 on the whole without distinction) the insured cannot abandon the Sugar & retain the Cotton - He must abandon both or neither - Mar 518. For

the insurance is entire - because the premium is so -

But if different articles are insured in different policies (or by different valuations in the same policy) it is otherwise (post 125) these are in effect distinct insurances in such cases - Ex \$1000 on Sugar - \$500 on Cotton - Either in two policies or in one - Mar 518 - Insured may abandon goods the Sugar & retain the Cotton -

- (119) So if the Insurance is on Ship & Cargo distinguished - viz how much is insured on each. abandonment may be as to one only - (16)
 Still if both are insured for one entire sum (16)

The abandonment must be unconditional - if not - it would not transfer the entire property to the Insurer - Ex Offer to abandon a captured Ship on condition that if released - or recaptured the property shall revert to the Insured - Not valid - Mar 518-19 -

Effect of Abandonment

Abandonment transfers the property saved to the insurers in proportion to their several subscriptions (Mar 519) This proportion obtains without regard to priority of the policies where there is more than one - & even tho' the property was over-insured - Mar 519 -

And the title vests in the insurers by relation from the commencement of the voyage - but not as to

Transfer to the Insurer of a Ship - the freight earned by the Ship before abandonment - Mar 579-20 -

But if the insurance is for less than the value of the (120) property - the insured may abandon in proportion to the sum insured or subscribed (ante 117) Ex Property insured worth \$5000 - insured to the amount of \$4000 & a total loss or by loss of the voyage - the insured will abandon only $\frac{4}{5}$ of what is saved; & the other $\frac{1}{5}$ remained in him - In this case he holds $\frac{1}{5}$ as tenant in common with the insurers - Mar 520 -

Cargo partly insured - money borrowed on Respondentia to the value of the residue - On abandonment, Insurer & lender have a joint claim to what is saved - The Insurer having the legal title to the whole & the lender an equitable claim to his proportion - Mar 524 -

If there are distinct insurances - upon the whole & upon different parts of the property insured - see as to the proportions of the Insurers of what is saved on abandonment - Mar 520-2 -

If after the loss is paid - Compensation is made to the insured for the injury which occasioned the loss - the Insurer is entitled to it - Ex - compensation for an unjust capture - Mar 522-3 - 1 Ves 98 -

If after abandonment (as for capture) the ship arrives safe this does not rescind the abandonment.

The insurer must still pay the sum insured. But is entitled to all the profits of the voyage - i.e. to all that is saved - however great the profits made may be. Mar 523.

//* See vide ante 109. 10 East 329. Ex. Goods insured - captured & abandoned - goods then released - voyage completed & profits made - The whole belongs to the Insurer -

(121)

But tho' the property should be recovered uninjured after a total loss paid the insurer cannot - for this cause compel the insured to take back the property & refund the money - Mar 524 - 4 Burr 1966 - For an abandonment - one properly made upon a state of facts which warranted it - at the time, is irrevocable Except by mutual consent (vid ante 109 108) Tho' if made for an insufficient reason (as when there had been no total loss) it is void -

In case of disaster the effects saved continue till abandonment - the property of the insured & he is bound to do his utmost to preserve them - & make the most of them - & the charges thus incurred - are borne by the insurer. (There is a clause to this effect in the policy) The Captain - factor or agent of the Insured has authority to act in his stead for these purposes. Mar 509. 10. 26. 1502 648.

It is the duty of the Captain in particular to act in such cases (under the an implied authority) for the benefit of all concerned: & his acts bind the Insured - the Insurer & all others interested in the Ship - or cargo. Mar 508. 2) - Bony 219 -

Insurance -

589

Thus if the Ship is disabled - he may hire another to transport the Cargo - or invest the proceeds of the goods in other goods: & this will bind the insurer.

Mar 377-8- 498- 527- Long 219- 17R 611-2-

And for whatever is received of the effects insured (122) the captain (in case of abandonment-) is accountable to the Insurer (It)-

But if the Insured neglects to abandon when he has a right to do so. he adopts the acts of the Captain & is bound by them - Mar 510- 11- 27- 17R 608-

And if the Insurers after notice of abandonment - suffer the Captain to continue in the management - he becomes their agent & they are bound by his acts. (It)-

The Sailors are also bound - in case of disaster to do their utmost to preserve the property & so doing are entitled to wages - so far as what is saved will allow - But if they neglect to do so - they are entitled to no wages - Mar 528-

Adjustment of Losses -

(123)

When the loss is total & the policy a valued one, the insured are entitled to the whole sum insured - (subject to such deductions only as may have been agreed on in the policy) The valuation in the

policy being *prima facie* at least equivalent to an admission at the trial of the value stated in the policy - (ante 43) Mar 100-3-5-199. 200-50-5- Park 1-103-2 Dun 1171-

Ex. Valuations in the policy \$1,000 - Subscription \$500 - Loss total - insurer liable for the whole sum subscribed viz \$500 - If the subscription had been \$1,000 - the Insurer would have been liable for the whole of that sum.

It is only when the loss is total that there is any difference between an open & a valued policy - (ante 44) Mar 203-531-2 Dun 1171-

Upon a valued policy on goods (the loss being total the insured has to prove only that the goods were on board at the time of the loss - For the value stated in the policy is admitted (ante 43) Mar 199-202-3-534-612-2 Dun 1171 - But in Eng^d since the Stat 29 Geo 2^d - ch 27 - as to wagering policies - the valuation is only "*prima facie*" evidence - Mar 201-

But on an open policy - insured must prove not only that the goods were on board, but the value of them (It) which value not exceeding the sum insured the insurer is bound to pay if the loss is total - (It) -

124)

In case of partial loss the same proof must be made whether the policy is open or valued - Mar 202-3-530-2 Dun 1171 - the indemnity stipulated in both sorts of policies - being that if the subject is lost - or damaged in the voyage the loss shall be borne by the Insurer to the extent of the sum insured - Mar 531-4 -

Insurance.

593

When there is a total loss of any one or more distinct articles or parcels. (out of a greater number) & admitting of a separate valuation. the insurer is liable for the whole value of those lost. The loss being considered total as to those instead of partial in relation to the whole. Ex. Of 100 pipes of wine two are lost & the rest arrive safe. Mar 531.
2 Sum 1170.

When part of the goods insured is saved. & exceeds in value the amount of the freight. the rule is to deduct the freight from salvage. (ie the value of the part saved) & the difference is the loss ie. the difference^d between the remainder due & the whole value. Mar 144 - 507 - 531 -

Ex. Value \$1000. part saved \$500 - freight \$100. then $\$500 - \$100 = \$400$. And $\$1000 - \$400 = \$600$. the amount of the loss - ~~is~~ Note. By difference here is meant not the difference between sum subtracted & subtracted but between the part saved & the whole value.

But if the freight exceeds the salvage the loss is total - the voyage not being worth pursuing. Mar 144. 507 - 31. 2 Str 1065.

But when the goods insured or part of them are only damaged - the amount of the loss is the difference between the value of the goods in their damaged state & their prime cost. Mar 531.

When several articles are insured for an aggregate (125) sum but with a distinct valuation to each (anti 118) & only one of them is put in risk, if that one

Insurance

be lost. the insurer is liable for such a proportion of the sum insured as the value of that one bore to the value of the whole. Mar 531 - 18th 207 -

If there is a clause to be free from average. (i.e. that the insurer shall be free from or partial loss) from a particular risk. where the loss is under so much per cent. - the proportion of the loss to the cargo must be calculated upon the cargo on board. at the time of the loss. Ex. Ins. = Insurance on a cargo of say 200 slaves free from average under 5 per cent. (for loss) from insurrection. 7 lost by that cause when the number on board was 50. Insurer is liable. for the loss is over 5 per cent upon 50 - tho' under 5 per cent upon the 200. Mar 532 - 18th 444 -

In valuing goods insured. the prime cost is not always the criterion of the true value. In case of gen'l contribution for an individual loss (i.e. general average) the goods should contribute not according to their prime cost but according to the price for which they may be sold at the time of settling the average (ante 105) Mar 467 - 532 - 3) according to price for which may be sold at Port of Discharge. that price is what owner of goods saved, has been benefited by jettison. But in settling a total loss. upon an open policy on goods the English rule of valuation is the prime cost (i.e. the invoice paid) & all duties & expenses till they are put on board. together with the premium of insurance. For in this case (ante 12.40 Mar 534 - Park 144 - 18th 77 -) there can be no sale of the goods at the port of destination to afford a

Insurance

547

Criterion as in case of fire & average - Beside, the insurance is merely an indemnity for the loss actually sustained & not for the loss of a future contingent profit. Nor is it to guard ag^t a low market -

¶ Note - Why are there duties & expenses to go into consideration of loss? They all go into valuation of goods when put on board - why Premiums? Is it not that this also is to be taken into consideration in estimating cost of goods to Insured - as the phrase is - they stand him in so much -

The rule is the same when the loss is partial - if it be on goods (It) -

The price at which the goods might have been sold - at the port of destination - if they had arrived safe - is immaterial - Nor is the defence of Exchange required - for the Insurer does not engage to indemnify ag^t any loss from such causes. Mar 534. 5-6-9-40 - 2 Burr 1167 -

A Ship insured is estimated on an open policy at the price she is worth when she sails on the voyage - including the expense of repairs - & outfit - &c. The value of her furniture - provisions & stores - money advanced to the sailors - & in fact any expense of outfit - together with the premium of Insurance - Mar 200. 535 - The premium being part of the cost laid out by the Insured on the Ship. Mar 535. 60. 200 - 2 Burr 1167 -

A partial loss upon a valued policy is that pro:

Insurance

= portion of the value in the policy which the diminution in value bears to the price of the sound goods in the port of delivery. Mar 538-40-612 - 2 Burr 1167. See Mar at supra -

And the Insurers duty to pay the loss accrues upon the ship's arrival & landing her cargo - at the port of delivery - Mar 539 - 2 Burr 1167 -

If the value in the policy exceeds (considerably) the true value the loss is adjusted as if the policy were open i.e. according to the real value of the subject insured (ante 43, Mar 540-1. 630 n) This rule obtains wherever the Law forbids gaming policies.

128) - A written adjustment endorsed on the policy & signed by the insured - with a promise to pay is prima facie evidence of all that the insured is bound to prove - Hence if unimpeached it entitles the Insured to recover without further proof. Mar 542-3. Beaw 310. It stands on the same footing as a note of hand - shewing consideration - If no express promise - then it would be in nature of a mere bill -

But this sum may be impeached either by showing that policy was a wager (I conclude) or for any fraud or concealment practiced - or by proving a misconception in point of fact - (Mar. Supp. of Law or of fact - 2d. "Ignorantia legis non excusat" - Mar 548-4 - Park 118. 1 Esp C 486.

And this adjustment may be used in evidence under a *prima facie* declaration - in an action on the policy - or as the foundation of an action &c may declare on this adjustment as on a note of hand (tho' no need of this special plea) *parke 118. Marsh 544. 558. (Pur 139)*

When Insured declares specially on the adjustment that is deemed the instrument which entitles him to recover.

But when on Policy & gives the adjustment-in evidence - it is then regarded as a *refused damages* -

Return of Premium -

(129)

The premium paid on one side & the risk assumed on the other are considerations for each other - Hence the Insurer is not liable to the risk without a premium - Nor can he retain it if he runs no risk. *Mar 548. 3Dun 1240. The consideration fails.*

And where a premium has been received by the Insurer - without his incurring any risk - it is money had & received by him to the use of the Insured - *Mar 548. 2Dun 1008. Long 454. Coux 668. 3TR 266. 1Show 156.*

A Return of Premium - may be claimed in various cases -

I. When the contract is void ab initio - No

right is acquired under it. Considⁿ fails. Premium may in gen^l be recovered back. Mar 549 - 63.

And the Contract may be void.

1st for want of interest in the insured. by Stat¹⁹ Geo 2^d (forbidding Wager Policies) as if he has no interest - or a small one in proportion to the amount stated in the policy (ante 17-9-43 -) Mar 103-5. Park 263-

Such Contracts are in general wagering Contracts & illegal. Mar 549. 103-5. Park 263.

General Rule. If thro' mistake - or any innocent cause - insurance is made without any interest in the Insured - or (in a single policy) for a much larger amount - than the real value of the subject - there shall be a return of the premium if it has been paid - In the former case the whole is returned; in the latter the return is of all received for the excess over the true value -

Ex. Insurance (thro' misapprehension) by a single policy on goods supposed to be worth \$1000. Insured had no interest - whole premium is restored. If his interest was only \$500 - half the premium is restored. Mar 549. Park 367-

And all of the Insurers are to pay in proportion to their several subscriptions - without regard to priority of names - or dates. Mar 549. 50 - They would all be liable in the same proportion to contribute to a loss -

If by several policies (made without fraud) the sum insured exceeds the real value of the subject they make in Law but one Insurance And all the underwriters are bound to pay according to the above rule - Mar 115-380-558- Park 280-1. See also ante 23-

Premiums is not returned in all cases in which the contract is void - as when an illegal insurance is made - the insured is participes criminis - For "in pari delicto &c" Mar 556-7 - 8 JR 548-575-

Thus upon a wager policy (which supposes the exact insured over the true value to have been intended by the insured) he cannot since the Stat 19 Geo 2^d - recover back any part of the premium - at least if the risk has been run - Mar 550-95-9-103-Long 451-

For he is participes criminis & has waited till the contract has been executed on the other side - // See same rule as to wagers generally - ("Contracts" page 37-) 8 JR 575-5th 405-1 Bos & P 290-3 East 222-Long 696 n - // I. G. disapproves altogether of the distinction in the law of contracts upon which this depends - (Distinction is this - One an illegal contract if one has advanced money - he may recover it back before the illegal act is done - after it has been done - he can't - So if deposited on an illegal game - Distinction is proven) But before the risk runs he might it is said have recovered it back - Mar 552-Long 451-See vid. Mar 551-760-1 East 96- See (I.G.) Qu: as to the principle of the distinction ut supra -

(131) - If the Contract is void as being a Reinsurance
 ag^t. the Stat. 19 Geo. 2^d c 37 - the Insured cannot claim
 any return of Premiums - Mar 553. 3 DO 161 - (sup.)

If under any circumstances - the Insurer might
 at any time have been liable for the whole sum insured
 - and - there shall be no return of any part of the
 premiums - For the whole amount - subscribed must
 by the supposition have been put at risk.

Hence: if Captors insure their interest in a prize
 then (ante 14) shall be no return of the premiums
 tho' the subject captured should be afterwards
 adjudged no prize - For if the property had been
 lost before the adjudication (in which case there
 could never be an adjudication) the Insurers would
 have been liable for the whole amount sub-
 - scribed - Mar 554. 8 DO 154.

(132) But if the policy is void without any fraud
 or fault in the insured - he is entitled to a
 return of the premiums -

Ex. Non compliance with a warranty ei-
 - ther expressed or implied - As by not sailing
 on the day prescribed - or without convoy
 when warranted to sail with one - Warranty
 of Neutrality on property not neutral &c
 or want of sea worthiness. For as the con-
 - tract never attached the Risk in law never
 commenced - Mar 556. 7 -

The premiums may be recovered back & when:

= ally is in an action on the policy - but as the Common Count of money had a res^d. not on the Special Count - upon the policy. Mar 558-99.

So if the policy is void by reason of fraud in the Insurer - the insured is entitled to a return of the premiums - Ex. Insurance on property 'lost or not lost' - where the Insurer has secret knowledge that it is safe (ante 75) Mar 552-9 - 10 L R 544 - 3 Bunn 1909.

But if void on account of fraud in the insured - it seems now settled that he is not entitled to a return of premiums (ante 73)

Ex. Concealing facts which increase the risk or for the contract is void thro' his own wilful fault & after he has taken the chance of cheating the Insurer by the Contract he ought not to take advantage of its voidness. Mar 559-63 - Park 218. Formerly holden contra. Mar 560-2 - Park 218 - Prich 20 - 2 P W 170 - 3 Bunn 1364 - 2 Bunn 208 -

II. If from whatever cause the risk is not begun (tho' the contract is originally valid) the premium is to be returned - For the consideration on which it was paid fails - Mar 564-75. 3 Bunn 1237 - 1 Bos. & P. 172. 8 Johns 1 - Ex Ship insured is destroyed before the policy attached (as if the insured insurance is "from a port" & she is destroyed in it before sailing) or from any other cause - never sails on the voyage insured - (133)

Insurance -

But where the voyage is divisible into several distinct risks so as to be in effect distinct voyages the premiums may be apportioned according to the several risks & if any one of the risks is not begun - the proportion of Premium applicable to that risk must be returned. Mas 564-7. 3 Burr 1237 - 105 172 -

Ex. Insurance from London to Halifax - premium entire - warranted with Convoy from Portsmouth - On arrival the Convoy was gone & notice immediately given to Insurers. Premium apportioned - the part applicable to the voyage from Portsmouth to Halifax returned. Here the contingency in the warranty (of sailing with Convoy) divided the risk & the voyage. It was a condition precedent to the Insurance from Portsmouth to Halifax so that the Policy did not attach upon that voyage - Upon that from London to Portsmouth it did attach (Luke v Lyde 3 Burr 1237) J. G. Du. as to the propriety of this decision -

Yet on an Insurance "at & from" a given port the risk at the Port & from it are not divisible - Ex "At & from" the port of A to B - Premiums entire - warranted to sail on or before such a day - She does not sail till after that day - so that the warranty is not complied with - No return of Premiums for the risk begins at the port of A - & is not divisible - for there were not two distinct voyages or hazards & therefore there can be no apportionment. Mas 567-8. 8 Johns 1 -

Case as before with the addition "warranted to (134) sail with convoy" & "if she so sails a third of the premiums to be returned" - She sails with conv. - voy. - Here as to the Convoy the risk is made distinct & the insured may recover the $\frac{1}{3}$ Mar 5678 -

Upon an insurance "at & from" with warranty to sail by such a day or with convoy - & the warranty is not kept - if there is a usage to allow a certain per cent. for the risk "at & from" - the usage will govern & the Insurer will recover back the premium after deducting from it the sum or proportions established by the usage - Mar 19 - 172 - 267 - 392 - 404 - 570 - 1 - 509 - 636 -

But if the risk is entire & once commenced the General Rule is - that there shall be no return of premium so that if the Ship merely sets sail - on the voyage insured the whole premium is earned - tho' she should be obliged to return to port the same hour & abandon the voyage. So if she deviates the same hour the whole premium is retained tho' the deviation discharged the Insurer from all risk subsequent - Mar 571 - 4 - Long 751 - ante 81 - For the entire risk has attached by the sailing in both cases -

Rule the same tho' the voyage be to several different places - if the risks & the premiums be one & entire - Ex "At & from A to B - from B to C & from C back to A - at a given premium (as 10 per cent) for the whole - Lost be-

= fore arriving at C. - No return even for the voyage from C to A. Mar 571-4 - Doug 751-
 For in this case there is no contingency separable
 = tying the risk or dividing the voyage & the premium is entire. Mar 573-

(135) - So of an insurance upon a life with the usual exceptions of death by suicide - or the hands of public justice - if the party commit suicide or is executed within an hour there is no return of premium. Mar 577-576-
 Comp 666- Doug 751- (See L Mansfield)

So. upon insurance for a certain term for an entire premium - if the risk is beyond there is no return of premium. tho' the contract should be determined by some event immediately afterwards. Ex. Ship insured for a year for any voyage - or voyage within that time - warranted free from capture by any French force - Captured within a month by a French Ship. No return of Premium for the residue of the time. Mar 574-8. Comp 666-
 - Suppose there was a warranty that she should sail on a certain voyage at the end of that month? vide Luke or Lyde 3 Burr 1237-

In all questions of apportionment the premium's being entire is one proof that the risk was entire. (16) & Mar 575- Doug 751-564- & 16. thinks generally the chief evidence.

Hence on an insurance for a year if a gross sum (as \$100) is given as a premium for the whole time - tho' expressed in the policy to be "at the rate of \$5 per month" & warranted, & captured as above - there will be no return of premium -

|| Aliter I presume if expressed thus "at (or for) \$5 per month" (omitting the rate of the gross sum) ||
 "At the rate of" is considered only as a mode of computing the gross sum Mar 578-9. Long 564. For the contract was not to pay five dollars for the first - five for the second or - but \$100. at once for the whole risk.

III. Part of the premium is often agreed in the (136) policy to be returned upon the performance of some stipulation - or condition by the insured.
 Ex: Five per cent to be returned if the ship sails with convoy & arrives". In this case - if the condition is complied with the Insurer is bound to return 5 per ct. - Mar 579. Long 255.

Tho' the Insurance is on goods the condition is complied with if the ship sails with convoy & arrives notwithstanding a loss upon the goods. It & Mar 581 -
 So that the Insurer is bound to return in such case the 5 per ct. - tho' liable for the loss on the goods - Mar 579. 581 - Long 255 -

So upon insurance - on freight to return a certain per ct. if the ship sailed with convoy & arrived. The sailed with convoy was captured & recaptured

& afterwards arrived. The Insurer tho' obliged to pay salvage was still bound to return the stipulated part of the premium - Mar 581-2
75R 421 -

1071

When the law requires a return of premium it is the usage of all maritime countries to allow the Insurer in most cases to retain $\frac{1}{2}$ per cent. - This is allowed it seems as compensation for his trouble & disappointment Mar 583-4 - (tho' he incurs no risk whatever)

The Proceedings.

1381

The sole original jurisdiction in matters of Insurance is in the Courts of Com. Law.

Courts of Chancery have no direct jurisdiction in such cases - Mar 24. 585. 6-

Nor have Ct of Admiralty - for this is a personal contract between A & B. tho' they have jurisdiction over questions in rem.

Still however Ct. of Chancery may upon collateral grounds hold jurisdiction of questions of insurance as upon all other questions affecting rights of property - as - To compel a Trustee to permit his name to be used in an action at Law - To issue commissions for the examination of witnesses - To grant injunctions to stay proceedings at Law till the return of such commissions - To compel a discovery by a party charged with fraud - & to order the delivering up or inspection of

material papers. But except in such cases, Equity has no cognizance of questions of insurance. Mar 586 - 1 Atk 457 - 2 359 - 3 Bro. P. C 525 -

But an actual submission & an awardum - does it will be a conclusive bar in this, as in other actions. Mar 587 - 120 ib 129 -

Will a bare submission still pending be a bar? I think not. If there were a clause in the policy binding the parties thus to submit it would be mandatory. - No man can shut himself out of the tribunals of his own country.

Parties can't by mutual agreement to submit to arbitration out of Court of their jurisdiction. 120 ib 129 - 2 Darr 1082 - Mar 586-7 -

Upon a policy unsealed (as those subscribed by private underwriters usually are) the proper form of action is a Special assumpsit: i.e. counting specially on the policy. Mar 587. 1391

If the policy is sealed (as one made by an incorporated company is) the proper action upon it is Cov^t. Broken. or Debt. Mar 596 -

For the heads & requisites of the declaration see Mar 587 - 8 - 2 Ch. Pl. Fifth "ap^t. in Pol. of Ins^r. Lill Ent -

Count for money had & rec^d. usually added so as to recover back the premiums - if on the proof

the Plff should be entitled to that - or nothing else.
Mar 588 -

Not necessary to declare upon an adjustment
it is good evidence upon a declaration on the
policy (ante 128.) Mar 543-4 - 588. Deaw 310 - Park 118 -
1 Esp R 486 -

Averment of interest in Plff may be general or
special - If general he must prove any kind
of interest that he has - If special it must be
proved as stated - (post 144) Mar 585-6 - 589-91 -
612 - 630 - 83 R 13 -

If insurance is made in the name of an agent
the action may be brought in his name - or in
that of his principal - 1 Bos 345 - 2 Ch Pl 71 - 2 Cnt R 91 -

But in either case it must be averred that this
policy was made in the name of the agent
as agent - & for the use of the principal - Mar
589 -

In averring interest - it is sufficient to allege
it to have been in those who had the property
- by at the time of making the policy - Tho'
another should have become afterwards in-
- terested with them - (post 156) Mar 589-90 -
2 Bos 1552 -

So if A the owner of a Cargo sells a share of it to B. & then insures it in his own name alone - an avowment of interest in himself (without any mention of B) is sufficient - The fact of B's interest does not negative the avowment - A still has an interest in the whole Mar 590-1-2 B & O R. 240-

The loss must be averred to have arisen from the true cause - or the Off cannot recover - (ante 8) - post 145) Mar 591-2 - 615. 17R 304-

Ex. Ship captured - Set at liberty in a condition to pursue her voyage - Sails on a different voyage & is lost - The Insured cannot recover as for a loss by capture - Mar 147. 436-592-3- 17R 304 - 40 723-

If Seamen are taken away by a Puff Gang & the Ship suffers - for want of Seamen. Declaration must state the loss to be by Pilfering. It is a loss by the perils of the sea 2 N R 336 - & must be so alleged - (It sup) -

If Pirates board a Ship & occasion a stranding - Recovery can't be had on a loss alleged by boarding of people - pirates &c - but only upon an avowment of loss by Stranding - The proximate cause (causa causata) must always be alleged Mar 593-436-147-47R 723-

So an avowment of loss by the perils of the sea is not supported by proof of a loss by the Captain's

misconduct. Mar 128 - 593 - 5 - Part 12.

To too - while Policies on Slaves imported were lawful & certain Slaves were thrown overboard to prevent a scarcity of water - an averment that they perished "for want of water" was adjudged not to be supported by the facts - the loss was by throwing overboard (It)

But the loss need not be alleged in the very words of the policy - Sufficient if it be alleged in words which bring it within the policy & if the words in the allegation are tantamount to those in the policy: Ex: Allegations of loss by the fraud & neglect of the Master is a sufficient averment of loss by "Barbary" - (ante 98) Mar 443 - 595 - L^o Ray 1349 - Ste 581 -

Where salvage is to be recovered - it is sufficient to state the injury which occasioned it - (ante 108) Mar 474 - 595 - 619 - Harbref 304 - for salvage is insured in the policy -

141)

If the only object of the insured is to recover back the premiums - the proper form of action is Indebitatus Assumpsit - for money had & rec^d. Mar 597 -

The Plea.

The most usual plea to an action of Assumpsit -
 - set on the policy - is the general issue (non assumpsit) which puts in issue every allegation in the declaration & enables the Deft. to prove any fact which disaffirms the contract. & discharges the Plff's demands under it. Mar 597. Story 106-7. Burr 153. As that the policy was illegal - that the Insured had no interest - fraud - misrepresentation - or concealment by the insured - That the Ship was not sea worthy that the voyage insured was not the one intended - That the Ship sailed on a different voyage - A deviation - that there had been no loss - or none to the amount claimed - non compliance with some warranty. So - that the Insurance was double & that Plff has already recovered to the amount of his loss under another policy - Mar 598.

Deft may plead tender - or under the general issue bring money into Court - by Stat 19 Geo 2 c 37. (Mar 599. 600)

Q. - Why might not money be brought into Court independantly of that Stat. As in other actions of Assumpsit - Debt. & Covenant.

In Debt or Covt. Broken. on sealed policies (as those of incorporated insurance companies) all special matters of defence must at Common Law have been specially pleaded. (5 Coke 113) But - this inconvenience is now remedied, under the

plan of rail debt-- or non infregit-conventionem)
by Stat 11 Geo I c 30 - Mar 600-601-

(142) When several actions are depending together -
ag^t several debts on the same policy they may
be consolidated by a rule of Court - suspending
the proceedings - in all but one of them - &
binding the debts in the others to abide by
the event of that one - Mar 602-4 - 10 R 464.
3 Burr 1477 - This is a modern rule of practice
& formerly refused - Mar 602-3 - Park Intro
50 - 2 Barnes 103 -

But as the condition of granting the rule the
Court may impose any reasonable terms on the
debts or - that they shall not apply to Equity - or
bring Error for delay - That they shall produce
books or papers - That in the case to be tried debt
shall admit his subscriptions - the Plff's interest
the l^o - or any other fact upon which the dispute
does not depend - But unusual terms are never
imposed but by consent - & thus counter terms
may be imposed on Plff. Mar 604 -

But this rule of C^t. can't be claimed as matter
of right - & if the Plff will not consent to the
Rule the Court will grant imparlances, or con-
tinuances in all the actions but one till he does
consent - Mar 604-5 -

If debts refuse - the Court will permit all the
actions to proceed. (14) -

The verdict found in the case tried under this rule binds all of the depts in the other actions - it is satisfactory - But if it is set aside & a new trial granted the other cases are governed by the final verdict. Mar 605. 1 BLR 464 - 3 Dun 1477 -

And if after such a verdict, an attorney in any of the other cases brings a writ of Error, even for manifest error, in violation of the terms of the rule - he is guilty of contempt - Mar 605. 1 BLR 21 -

The principal points to be proved by the Plff 143, at the trial are

1. The Contract.
2. The payment of the Premium
3. The Interest of the Insured -
4. The performance of Warranties -
5. The Loss.

1. The Contract.

The contract is proved by proving the policy & no parol evidence can be admitted to contradict it - or vary the terms of it - Mar 618-9 - 209-47. Skin 484 -

Case holders contra Sal 444 (Mar 247) Dictum of L^d Holt that a certain case which he knew parol ev. was admitted to contradict. But, but - C^t on examining Rolls found L^d H. incorrect!!

In doubtful points - usage may be proved as explanatory of a clause in the policy - but the

opinions of witnesses are not admissible. Mar 608
- 10 - 360. Story 513 -

When a policy is effected by procuration
proof that the person acting as agent has been
in the habit of subscribing for the dept is pri-
ma facie sufficient proof of his authority. Mar 610 -

2. The payment of Premium -

The clause in
the Policy conferring the Receipt of the Premium
by Insurer is sufficient evidence of its payment
by the Insured. Sufficient at least to sustain
an action on the policy. Tho' not conclusive
in the Ins? in an action for premium its
insertion in Policy being matter of form.
Mar 610 - 611 -

3. The Interest of the Insured -

This may be
proved by any documents which are evidence
of property - as bills of lade - or of loading or in-
voices (with proof that the goods were on board
so by bills of Charges of the outfit - customs house
clearances &c or by pawn evidence - by act
of ownership or by discharging the loading - paying
the people employed &c Mar 611 - 13 - 18th 209. 373 -
Story 1127 -

under a general assignment of interest - the insured
may prove any species of insurable interest -
He need not state the kind or quantum of in-

= test but will recover in proportion to what he proves - Mar 85. 589. 612 - 630 - ante 139 -

Upon an open policy the real value of the ins: = test must be proved: On a valued policy it is necessary "prima facie" to prove only some interest - Yet the value stated may be disproved for the purpose of showing the contract to be a wager under Stat 19 Geo 2^d. C 37 - (ante 43) Mar 199 - 612 - 2 Dun 1171 - 2 Dan 716 -

Upon a policy on "goods" generally the insured may give evidence of a mortgage or other lien - Mar 613 - 225 - 1 Bl 2 423 -

Proof of Bottomry & Respondentia Bond - & of the interest of the Obligor is sufficient proof of the interest of the Oblige - where he is the insured - Or the Obligor may testify to his own interest - Mar 613 -

4 The performance of Warranties -

The truth of af: = firmative warranties must be strictly proved by the Insured - So - of the performance of Executory or promissory warranties - Ex. That the property was neutral - that the Ship sailed within the time limited - with convoy or - as the nature of the case may require - (Ante 58. 15. Mar 288. 328. 614 -

5 The Lofs.

The loss must be proved to have happened - during the continuance of the risk
Mar 161. 615.

Loss of goods may be proved by the testimony of witnesses, like any ordinary fact. - But the best evidence of what goods are on board - is the bill of lading which if not impeached is regarded in all courts as conclusive of the quantity & species of goods laden.

(145)

But the Insurer may impeach it of fraud or collusion & if he does not - it concludes him. The insured on the other hand cannot impeach it because it is his own evidence. Mar 615.

But a Protest by the Captain is no evidence in chief on either side while he is living. The only use which can be made of it is to contradict his testimony if he varies. Mar 616. 7th 158 -
"Evidence" -

2d - Is it evidence in chief after his death - except as any other private memorandum might be.

The loss must be proved to have happened from the very cause alleged in the declaration (ante 87. 140) Mar 616. 17. 591-2. 147. 436-4th 727 - 1st 304. For particular examples of this rule see ante division "Declaration" p 140.

Mar 147. 436. 593. Part 62. 1st May 1349. Str 581. 4th 33 -

No loss can be proved unless it is the immediate consequence of some peril insured ag^t. (Note 87.)

Mar 133-4. 418. 617-20. Park 55. 65R 656. 184R 444.

For the remote consequences of a peril are not within the policy. - (36) -

Thus. If a Ship is driven by stress of weather upon an enemy's coast & there captured - the loss is not by stress of weather - or "perils of the sea" but by capture - Mar 619. Park Ca 212. See further exam: - plus - Mar 617-20. 15R 130 n. Park 52.

But loss may prove damage - immediately proceeding from the cause alleged. As payment of salvage. when the loss is averred to have been by stranding or sinking. - Mar 619. 20. Hardw 304.

Ways & provisions expended. or consumed during a repair of sea-damage are not a loss within the policy on the Ship. Mar 620. Park 52-4.

(146)

Note - The freight & not the ship incurs such loss. Mar 621. Park 54-5. See gp. as to the ground of the distinction - It seems to be that this expense is not the immediate effect of the perils of the sea. Indeed the expense may be said to constitute the loss on the freight.

So if the expense of ways & provisions had been incurred during detention under an embargo Mar 621 - 15R 127. Park 54-5.

Yet the Ship's provisions are considered as part of the Ship itself & are protected by a policy on the

Insurance

Ship - As if they are lost or injured by sea-damage
 &c. But in such case, the loss is the immediate conse-
 = quence of one of the perils insured against.

Mar 622-6. 43 R 216-

Notes - What shall be deemed part of the Ship, or
 furniture may depend on the usage of a particu-
 = lar trade. Mar 626-7-

If the Owner of goods insured has been compelled
 to pay freight "pro ratio itineris" in case of
 capture & detention - he cannot recover the
 amount paid from the Insurer. The case is not
 within the contract between these parties. An
 insurance on goods has no concern with the freight
 Mar 627-8-

If Plff alleges a total loss - he must prove & re-
 = cover for a partial one Mar 628-9. So - if he
 declares for the loss of an entire thing (as of a
 Ship) when he was owner of only a part of it - he
 may recover for the loss of his part. Mar 589 -
 612-30. Burr 904 - 101 R 198. The action being a
 liberal one in which Plff recovers according to
 his actual damage -

147) If he alleges a loss interest - than he has - he
 may recover to the extent of the interest alleged
 Mar 630-1. Park 402 - & no more -

As to the right of the Insured (under Stat 19 Geo 2^d
 c 32) when Insurer becomes bankrupt - See Mar 631-

Bottomry & Respondentia -

(148)

Bottomry is a contract in nature of a mortgage of a Ship - on which the Owner borrows money to procure the outfit - or cargo for a voyage & pledges the bottoms (per pro toto) of the Ship as security for repayment - Mar 93 - 132 - 202458 -

The agreement is - that if the Ship be lost in the course of the voyage by any of the perils mentioned in the contract - the lender shall lose his money - But that if she arrives safe he shall be repaid with the interest agreed on - Generally called the Marine Interest - which may lawfully exceed to any extent the common rate of interest established by law in other cases - (16) See The Dove Mar 718 -

By this Contract - not only the Ship & Tackle (if she arrives safe) but the person of the borrower is bound for the repayment - Mar 1323 - 202458 -

If the subject pledged is not the Ship but the Cargo - (which is of course intended to be sold) the contract is called Respondentia - under which the lender's principal security is the personal responsibility of the borrower - Mar 133 - 202458 - And in this particular - consists the chief difference between the two contracts -

Insurance.

In both - if the subject pledged is lost - the loan is lost to the lender.

If however the loan is for the homeward as well as for the outward voyage - the return Cargo - or money rec^d for the first-cargo is also bound - (i.e. in case of Respondentia) Mar 633 - 2 Bl 458.

On the contract of Bottomry - the loan on the Marine Interest - is to be repaid on the safe arrival of the Ship according to the conditions of the contract! -

Upon the Contract of Respondentia - upon the safe arrival of the Cargo - or (as the case may be) of the return for it - Mar 633 - "Mary" b.

(149)

It is of the essence of both contracts - that the Loan (i.e. the principal) should be exposed to the perils of the sea - at the risk of the lender Mar 634 -

Difference between Bottomry & Simple Loan.

In the latter the money is at the risk of the borrower & to be repaid at all events; In the former it is at the risk of the lender during the voyage - 2^o. On a simple loan - only the lawful interest can be reserved. On bottomry any rate of interest agreed upon. Mar 634 - 5 -

Analogy also between Bottomry & Respondentia on the one hand - & Contract of Insurance on the other - In the two former the lender is liable to loss by perils of the sea - In the latter the Insurer is thus liable - Lender in 1st reserves or receives Marine Interest as the price of the Risk - The Insurer - the premium - Both are exposed in general to the same perils - And neither the interest in one case - nor the premium in the other - is due if no risk be run - Mar 635.

In many respects also the two Contracts differ - Among other points of difference - in case of Shipwreck the lender has a lien on the effects saved to the exclusion of the borrower (they being pledged to the lender) But the Insured has an Interest - in the effects saved in common with the Insurer so far as he was uninsured -

A clause exempting the lender from general average would be illegal & void (tending to injury) Aliter in case of an insuror - Where the voyage is divisible - the premium may be apportioned - But in Bottomry - if the Risk be begun & no loss happens the entire marine interest - must be paid - Mar 636.

Bottomry & Respondentia are now much out of use - Hence I present only this general view of them - For further particulars see Mars. & Park.

150). II. Of Insurance upon Lives.

The great principles which govern Marine Insurance - govern Insurance on Lives & against Fire.

This is a Contract by which the Insurer in consideration of a Premium (either in a gross sum or by installments) engages to pay the person for whose benefit the Contract is made - a sum of money (or an equivalent annuity) upon the death of the person whose life is insured - whenever it may happen (if the Insurance is for the whole life) or in case of its happening within a certain period (if the insurance is for a limited period) - Mar 114. 722. Park 429. 2 Bl 459 -

This sum is to be paid to the person agreed upon in the policy - 15 R 254 - Mar 174. 667-8 -

This Contract is usually qualified by a condition or warranty inserted in the policy - or contained in a written declaration - on the part of the Insured that the person upon whose life the insurance is made has no disorder tending to shorten life - that he has or has not had the small pox - That his age does not exceed a certain number of years - & that if any of these warranties or conditions be untrue - the contract shall be void & all money paid by the Insurer for premium - Mar 667. 722. 10 R 4312 -

The warranty that the person whose life is insured has no disorder or does not imply that he is entirely free from all infirmity or indisposition. It is sufficiently true if he has reasonably good health for a person of his age & constitution. Mar 667.

So. tho' he had a particular infirmity if it had no tendency to shorten life - & did not in fact contribute to his death. Mar 667. 670 - 102 or 312 - Ex. That he had a local palsy in consequence of a wound. is no breach of the warranty. (151)

So liable to fits of gout. holden as breach of the warranty. Mar 669 - 70 -

If there is no warranty the Insurer assumes the risk whatever may be the state of the health of the party whose life is insured. - unless there be some fraudulent representation or concealment. Mar 670 - Part 437. See Analogy Mar 336.

If any misrepresentation is made to the first underwriter. every subsequent one may give evidence of it in his defence. Mar 670 - 1. See Mar 338.

Interest. Risk &c.

By Stat. 14 Geo. 3^d - c 48 §1 - insurance upon any life or other event in which the in-

Insurance

= Insured has no interest is void. Mar 672-3.
 Would not such insurance be void upon
 Com. Law principles as being opposed to good
 policy & morals? - It was not so considered
 it seems.

It is agreed that a bona fide creditor has
 an insurable interest in the life of his debtor
 = or. At least if he has only the personal ser-
 = vitude of the Debtor - within the Statute -
 Mar 673-4. Park 432.

(152) But to warrant such insurance by a Creditor
 the debt must be upon good & legal consider-
 = ations: Hence the Holder of a note given for
 money illegally won - at gaming has not an insurable
 interest. Mar 675-6. Park 432.

That the Debtor is an infant. is no objection to the
 Insurance - For he might not avail himself of
 his infancy (i.e. he might not plead "infancy" as
 an infant-promisor. Mar 675-6. Park 432 -
 Note The Infants note in this rule must be regarded
 as only voidable not void

The Trustee of a Creditor may insure for the benefit
 = of the latter. as his Executor &c Mar 576.
 Park Ca 151.

Under the Eng. Stat. the Insured can recover no
 more on the life of a third person (as a debtor)

than the amount of his interest in the life in :
 = land. Mar 675. 9 East 72. 100 344. 110 493. Hence pay-
 = ment of the debt - before action brought on the policy
 bars the action of the Insurer.

A Lof upon this Contract must always be total.
 As the event on which it cannot happen partially,
 there can not be a partial Lof. Mar 677.

The usual exceptions inserted in Eng^d in favor of
 the Insurer are these - If the insurance is upon the
 life of the party insured - it is usually declared - that
 if he shall depart the limits of Europe - shall
 die upon the sea - shall enter any military or
 naval service without the previous consent of
 the Insurer - or shall die by suicide - duelling or
 or the hands of justice - the insurance shall be void.
 Mar 677. 722. Corp 669. Long 658-9.

(Would not death by suicide or duelling discharge
 the Insurer without such exceptions - as the Insured
 voluntarily exposes his life?) -

Note. If the Insured in such case dies by suicide
 or duelling there is no return of the premium -
 Corp 669. Long 658-9.

Where one procures insurance upon the life of another, (153)
 death by suicide duelling - or by the hands of
 justice is not usually excepted - For the party to
 the Contract is not a voluntary agent in such death.

Where the insurance is for a limited period, not
 only the cause of the death, but the death itself

Insurance

must happen within that period - or the Insurer is not liable (Mar 174 - 677 - 8. 17R 254). Ex A mortal wound received within the time of the death after the expiration of it -

And if it be uncertain whether the death happened within the period - it is a question of fact - to be decided by the Jury from the circumstances - which may appear in the case - Mar 178 -

When there is no direct proof of the death at the time of bringing the suit - if the person whose death is questioned has been absent & unheard of for several years - will not his death be presumed? In analogy to cases of bigamy - Leach on lives, or under the Stat 1 Jac 1st & 19 Car IInd? 4 Bl 164 - 6 East 85 - "Hunt & 20 qd" 13 -

If he should afterwards appear to be alive, relief can only be had in Equity I suppose -

In a policy to take effect - "from the day of the date" the day of the date is excluded in computation - Mar 178-9. See Comp 714 - Powell on Powers - Peng v Leeds -

If "from the date" it is included. (16) -

Most of the principles which govern marine insurance are also applicable to this species of insurance - Mar 179 - Ante 150 -

III. Insurance against Fire.

(154)

By this contract the Insurer, in consideration of a premium received - agrees to indemnify the Insured ag^t losses - or damage in his buildings or goods by fire during a limited period Mar 681.

It seems that Insurance ag^t fire without interest is void on Com. Law. principles - Public policy manifestly requires the rule to be so - Mar 684-5-99-701-2 Ark 554-3 Dros P.C. 497-

And the Insured must have an interest both at the time of Insuring & at the time of the loss. (Post-156.)

At any rate such insurance is void in Eng^d by the Stat 14 Geo 3^d. ch 48. Mar 684-5-

It is generally provided in the printed proposals (which are deemed part of the Contract) that if there is a previous insurance on the same property on which a subsequent insurance is applied for - notice of the former must be given to the subsequent insurer before the subsequent insurance is effected - And notice of a subsequent policy must also be given to the prior insurer: So that the existence of each policy may be endorsed on the other - If then such notice is not given the policy is void - Mar 685-6-115-380-5-6-

If the same proviso - I believe is inserted generally in the body of the policy - Mar 725-.)

Insurance.

And in case of Loss the underwriters on each policy are to bear their rateable proportions of it - according to the amount insured by them respectively - ante 23 - Mar 186 -

But it is not necessary that the Insured should have the absolute interest in the subject. A Trustee - Mortgagee - Reversioner - or a Factor - or Agent - having possession of effects to be sold - on commission may insure - But according to the proposal - the nature of the interest - must be specified. (See in marine insurance - same!)

(155)

By the usual terms of the policy - the Insurer is liable for all losses or damage by fire, during the term specified in the contract - Mar 187 -

But by the common proposals the insurer is not liable for any loss by fire occasioned by invasions of any kind - "foreign enemy - or military or usurped power" Mar 187 - 725 - And these proposals are deemed part of the contract - (p 154, Mar 187 - 706-7 - 274 DL 577) - The same proviso is usually inserted in the policy - Mar 725 -

By "usurped power" is meant an invasion from abroad or an internal rebellion. ("conducted by authority" per L^d Mansfield - Mar 187.) Not a commotion - Mar 187 - 8 - 220 DL 367.

The term "civil commotion" which is also introduced in the proviso of some policies has been defined "an insurrection of the people" for any "general purpose" as to intimidate the Legislature - to procure the passage or repeal of Laws or - It always implies & concludes opposition in some way to government - as its object. It was the case with L^d Gordon's riot in 1780. Mar 188 - 691 -

It seems clear from analogy to the liability of the insured in Eng^d (under the Stat 14 Geo II c 586.) that if the insurer voluntarily pays a loss by fire occasioned by a wrong done - the latter is still liable in an action brought by the Insured in the name of the Insured - tho' the Insured has received full satisfaction from the Insurer (Mar 691 - 3) For the Insurer having paid the loss stands in the place of the insured - as in case of abandonment in marine insurance - And besides a payment (either voluntary or compulsory) by the Insurer is not satisfaction for the Trespas.

The risk commences in gen^l from the signing of the policy - unless some other time is appointed - Mar 281 -

In general the termini are fixed in the policy as to an hour -

In policies for a term of years or an annual premium - 15 days from the expiration of each year are usually allowed by the terms of the policy for the payment of the premium - for the ensuing year. In such cases the property is protected during the 15 days (sent) if the premium is paid within

Insurance

that period. Mar 1893-5. See 5 JR 895. Contra (Sunt)
 where in a half yearly policy there was a clause
 "as long as the managers agree to accept the same".
 This case is not therefore inconsistent with the rule (sup)
 for the latter clause put it in the power of the
 managers to refuse the premium at any time, by
 its own terms & upon this ground it was decided.
 & the rule sup was not denied.

So that if the house is burnt on the 10th premium for
 the 2^d year is paid on the 14th (of the 15 days) the
 Ins^r is liable - tho' possibly the Ins^r would not have
 effected insurance for the 2^d year -

The policy being a chose in action is not assign-
 - able at Law. And besides an assignment of it
 would be ineffectual without a transfer of the
 interests insured - because to found a recovery the
 Plff must have an interest at the time of insuring
 & at the time of the loss. Mar 1884 - 5 QB 9 - 701 (Jan 1894, 1894)

Which left does the interest in the policy pass as an
 incident upon the transfer of the subject. Mar
 1899 - 30 W. P. C. 497. For policies are only special
 agreements with the persons insured - (W & Mar 702
 2 JR 554 - The contract is not strictly an insurance
 of the subject (which cannot be) but of the per-
 - son ag^t damages (W) -

The confidence reposed in the original owner may
 be much greater than that in the purchaser &
 the agreement is to indemnify the former & not the
 latter -

In the printed proposals - it is declared - that on the death of the Insured - the interest in the policy shall devolve on that one of his Representatives to whom the property insured belongs - provided he procures his right to be indorsed upon before any new policy be made. Mar 690 -

Note - Tho' this is an assignment of the Policy with the Subject - yet it is not an assignment inter vivos -

But in gen'l notice is given - in the proposals that the policy shall be of no force, if assigned (even when the Subject is assigned) unless the assignment is allowed (by an entry in the books of the Company insuring) or indorsed upon the policy -

So. that - an express permission is required -

Mar 697 - 698-9 - 700-2 - 2 Nov 554 - 3 Dec 497 -

A very reasonable rule -

If the Owner of the Subject insured transfers it to (157) another & engages to get the policy assigned to the purchaser by a proper indorsement - he is liable - for all the consequences of neglecting to do it. Mar 207 - 703 - 18th 74 -

He incurs all the risk therefore in having the transfer of the policy effectually made & will be liable as the underwriters would be on Policy - 18th 74 - Mar 207 - 703 -

So. tho' the engagements were fratuitous - if
 the party promising commenced the perform-
 -ance & by negligence left it incomplete & in-
 -effectual - As if had procured a renewal
 of the policy & neglected to procure an assign-
 -ment of it - in the mode required - (ante 46)
 Mar 207 - 703 - 18 Feb 74 - Vide analogy 1 H BL 158 -

To prevent fraud the printed proposals of most
 fire - insurance companies - prescribe certain
terms or conditions - a compliance with which
 by the insured - is indispensable to the liability
 of the Company for any loss - See for the Com-
 mon form Mar 704 -

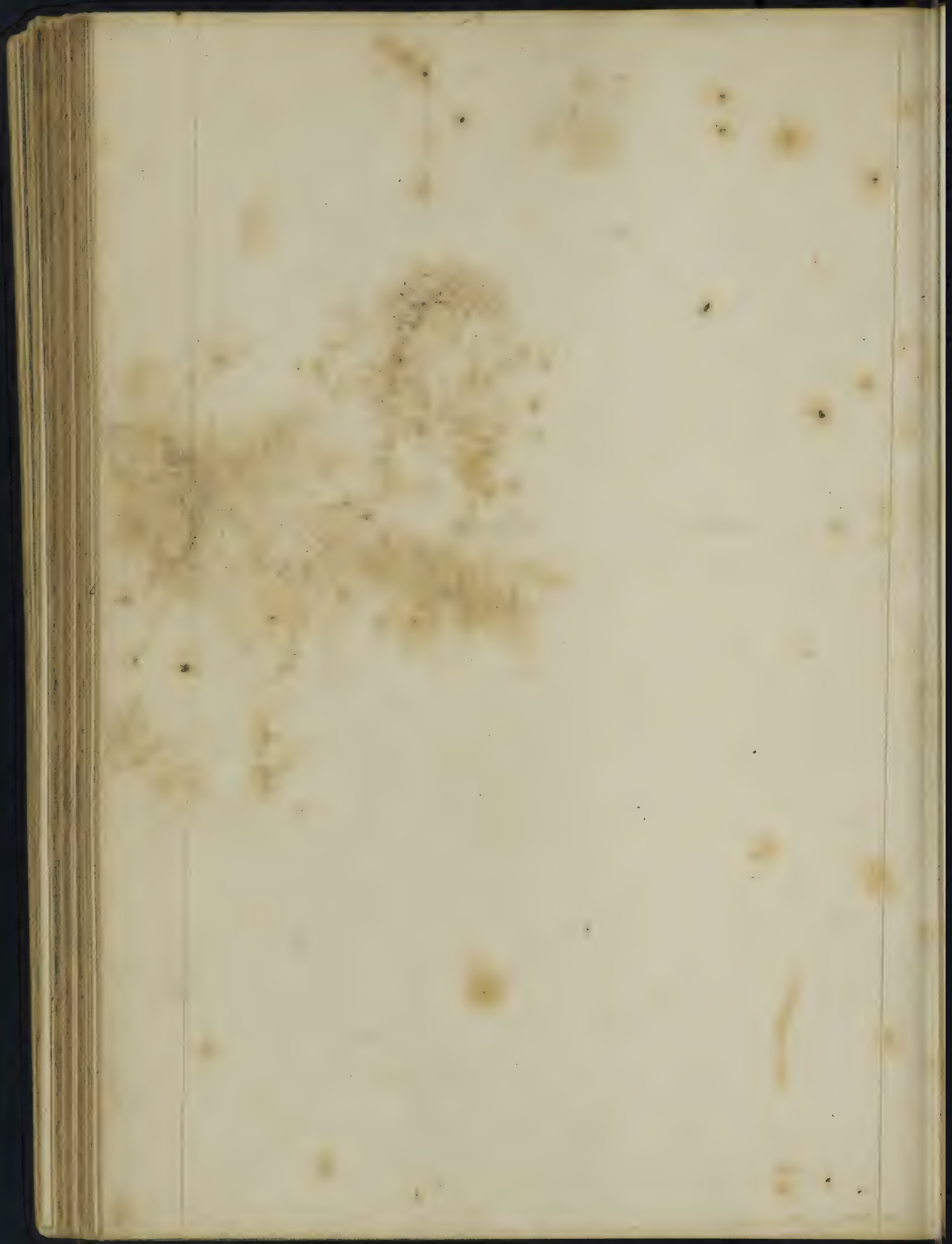
These proposals require immediate notice of
 any loss claimed ag^t. the Insurers - A verifica-
 -tion of it by the oath of the Insured - As the
 case may be the production of books - accounts
 or other vouchers - & Eng. policies require a
 certificate under the hands of certain officers
 & reputable inhabitants of the parish (or town)
 (as the ministers - church - wardens &c) stating
 their acquaintance with the character of the
 Insured - & their knowledge or belief of the loss
 & that it was incurred without any fraud
 on the part of the Insured - Mar 704 -

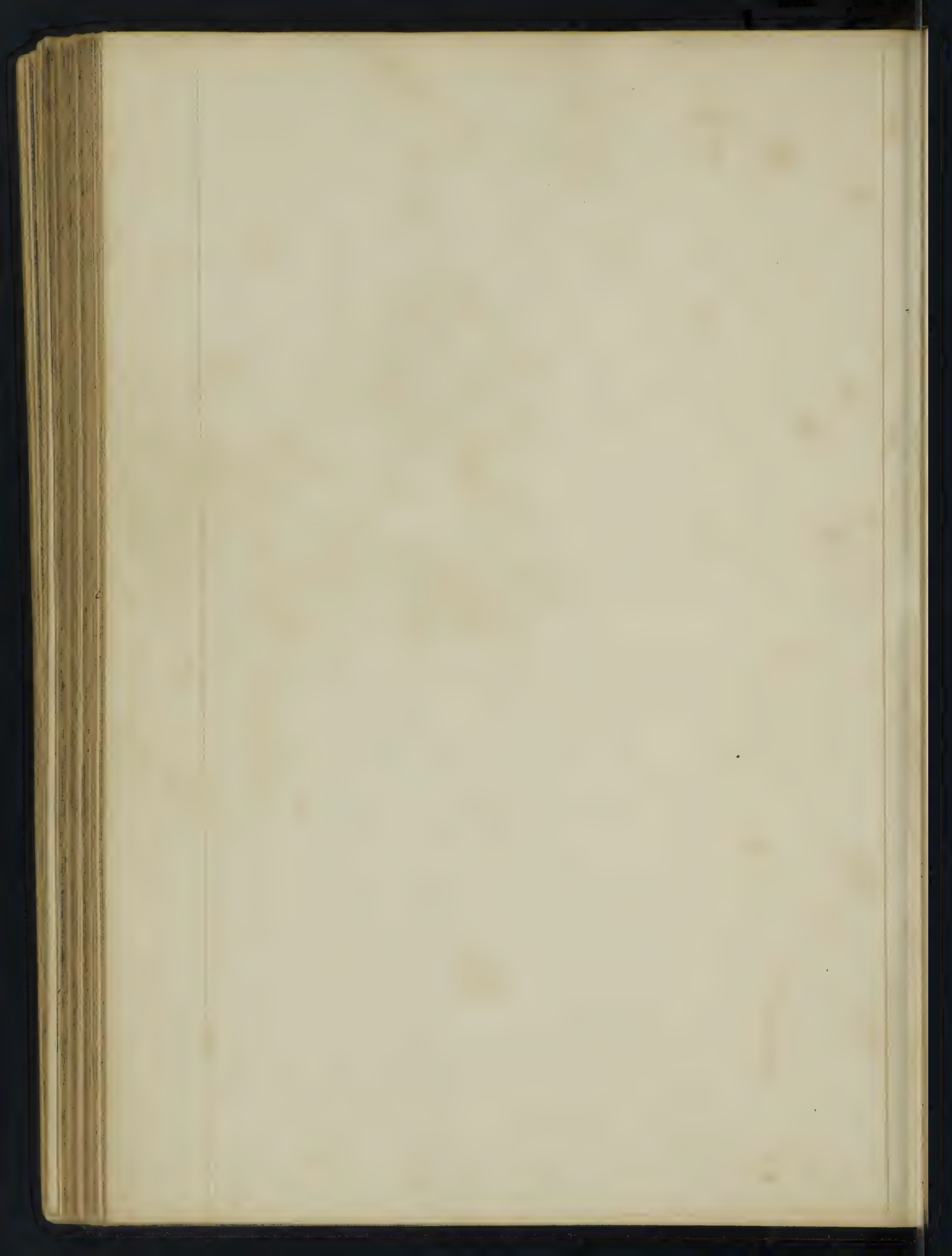
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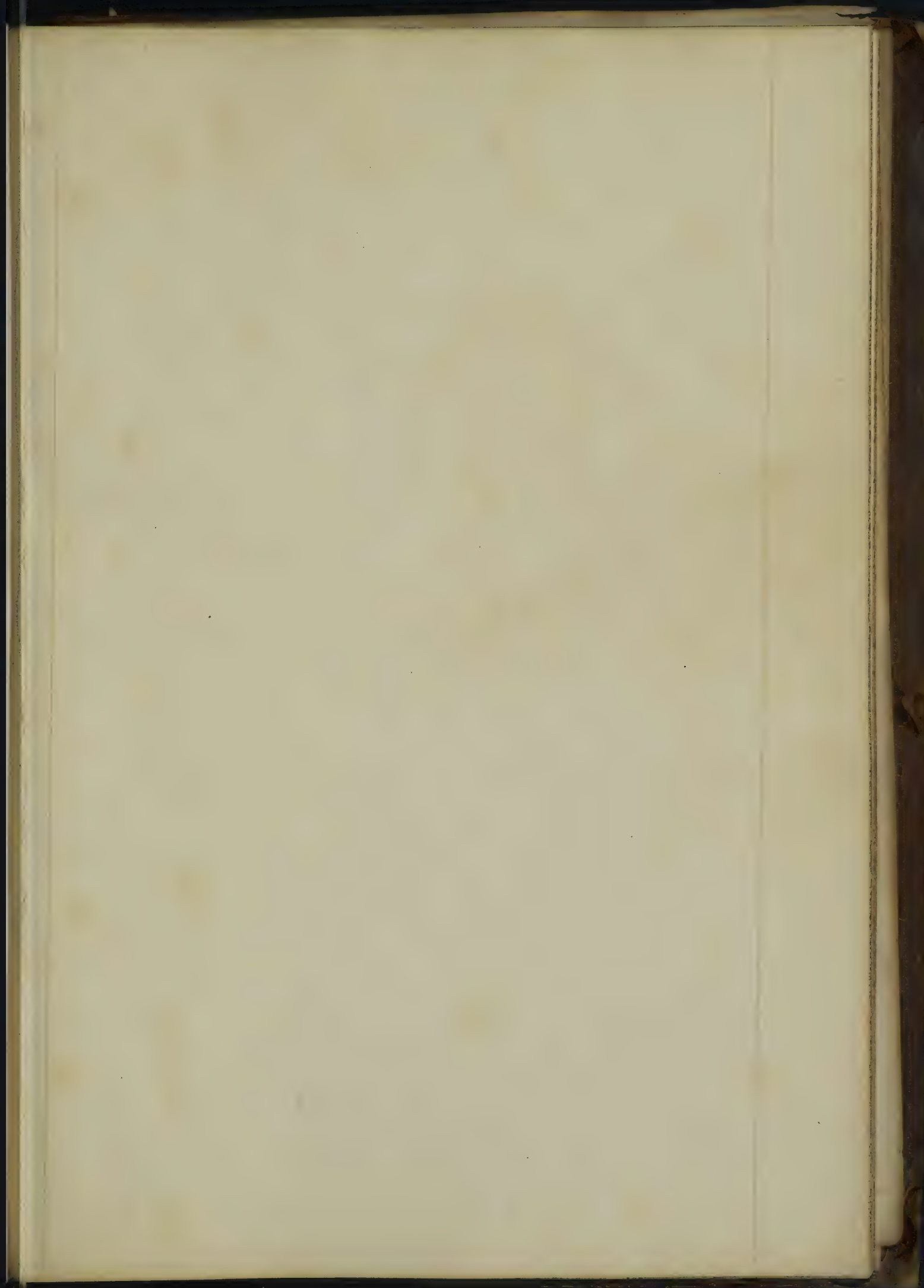
The terms prescribed in the proposals are part of
 the contract & conditions precedent to any claim
 upon the policy - Mar 252 - 707 - 2 H BL 574 - 672 710 -

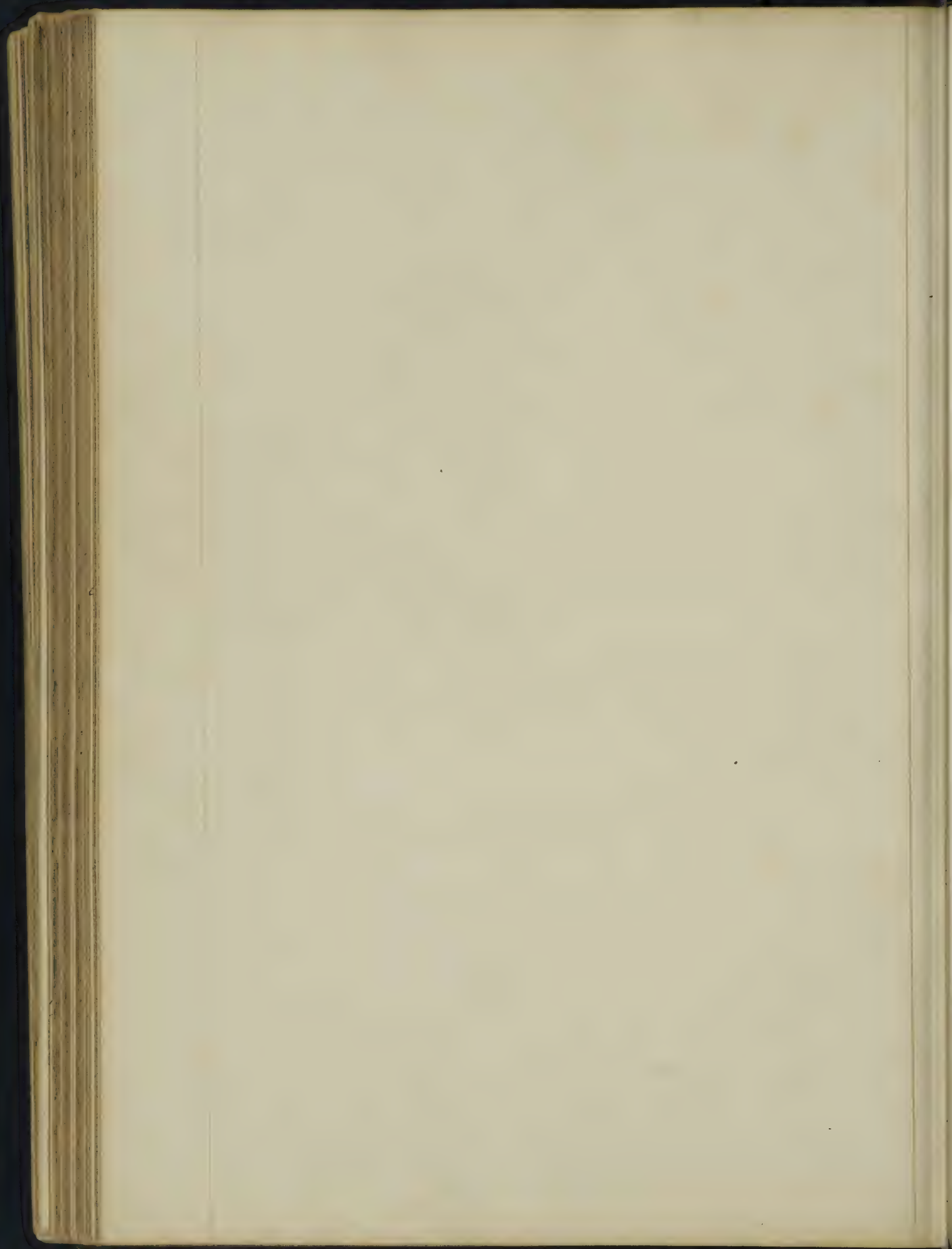
Hence if the certificate prescribed is not procured the Insured cannot recover. And it is no excuse for its non-procurement that the minister resides out of the parish & does not know the Insured. or that he or any other person from whom it is required. wrongfully & unjustly refuse to furnish it. Mar 705-709.

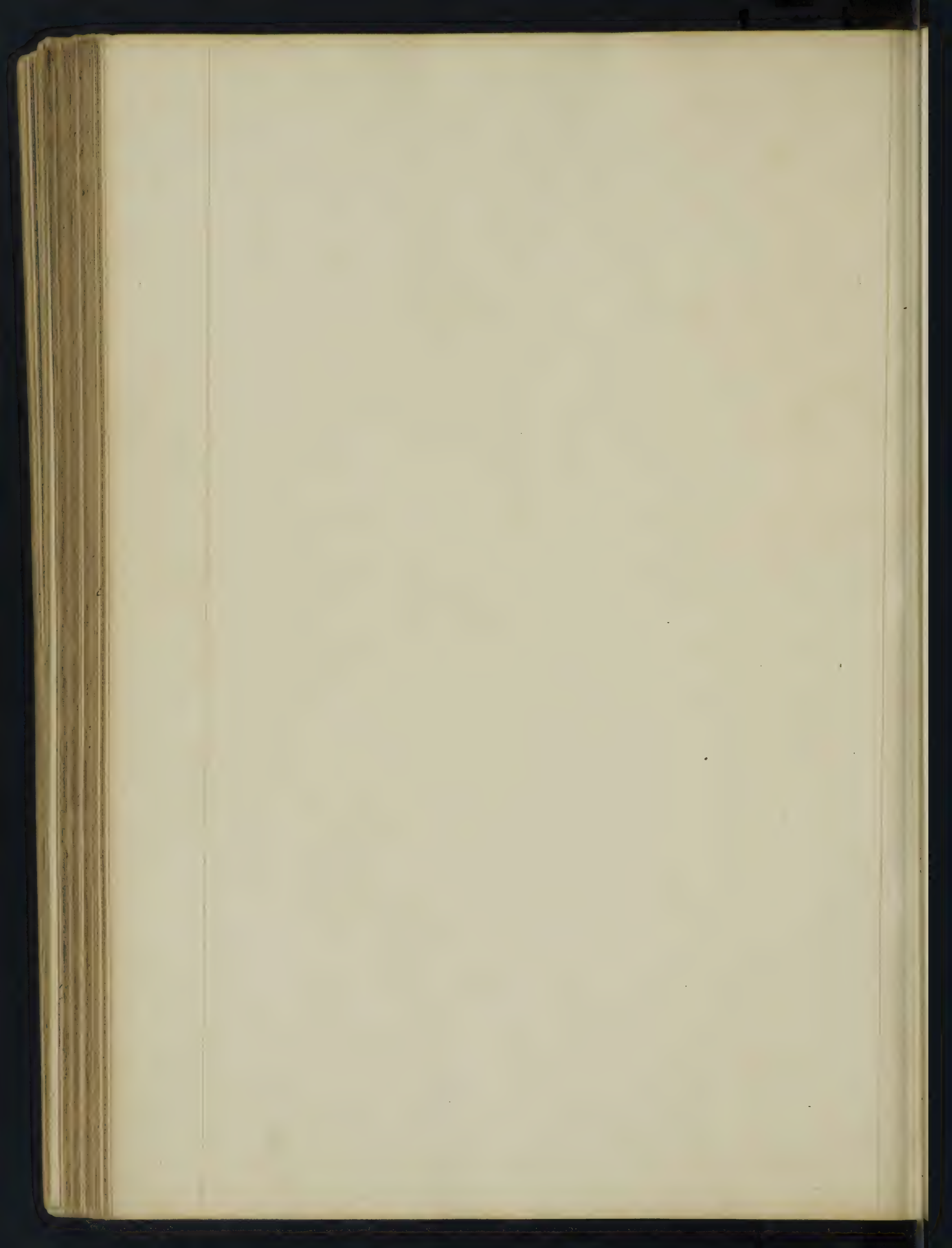
2 H DE 574-577 (2) - 6 DE 710. 1 H DE 254 & see Mar 252 -

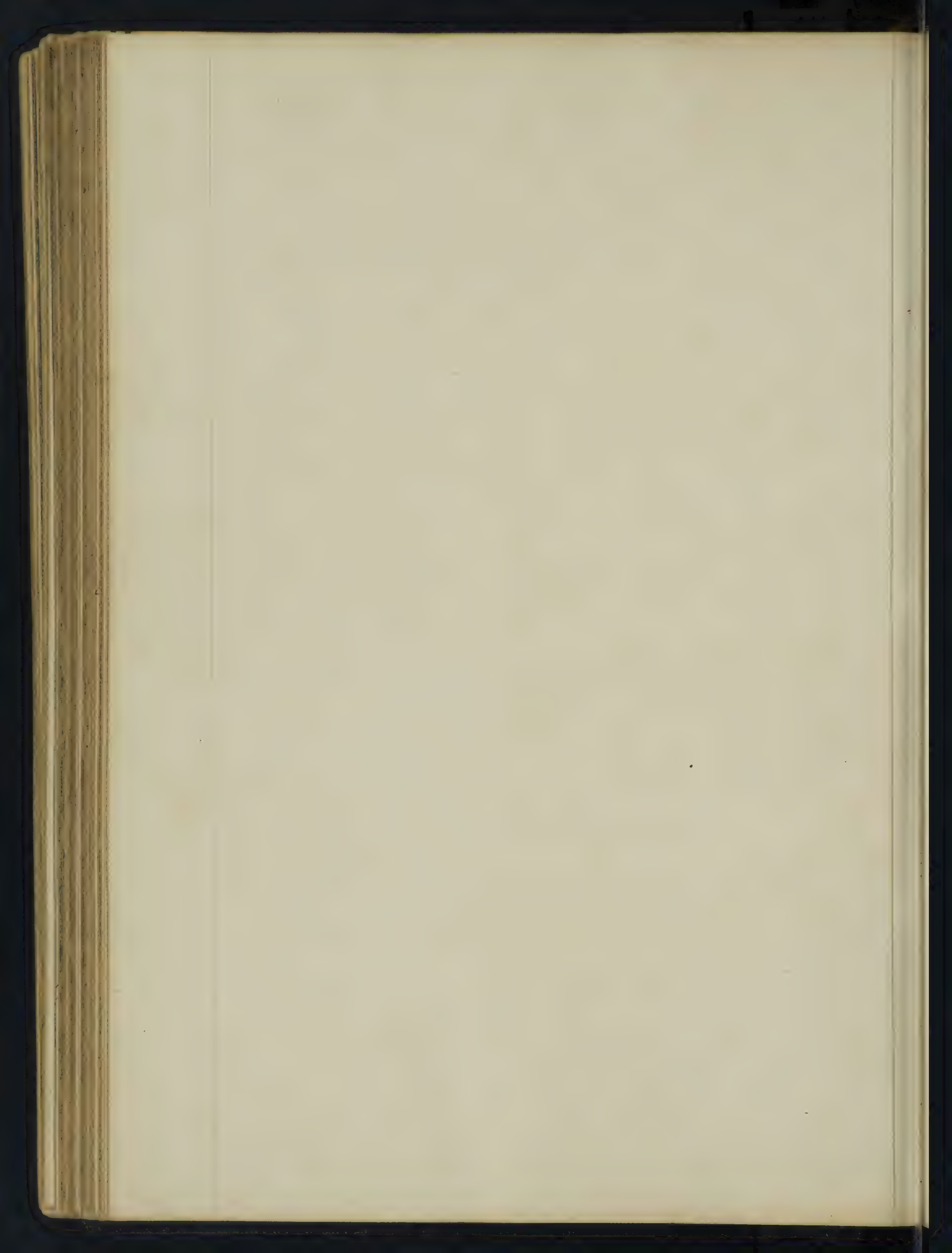


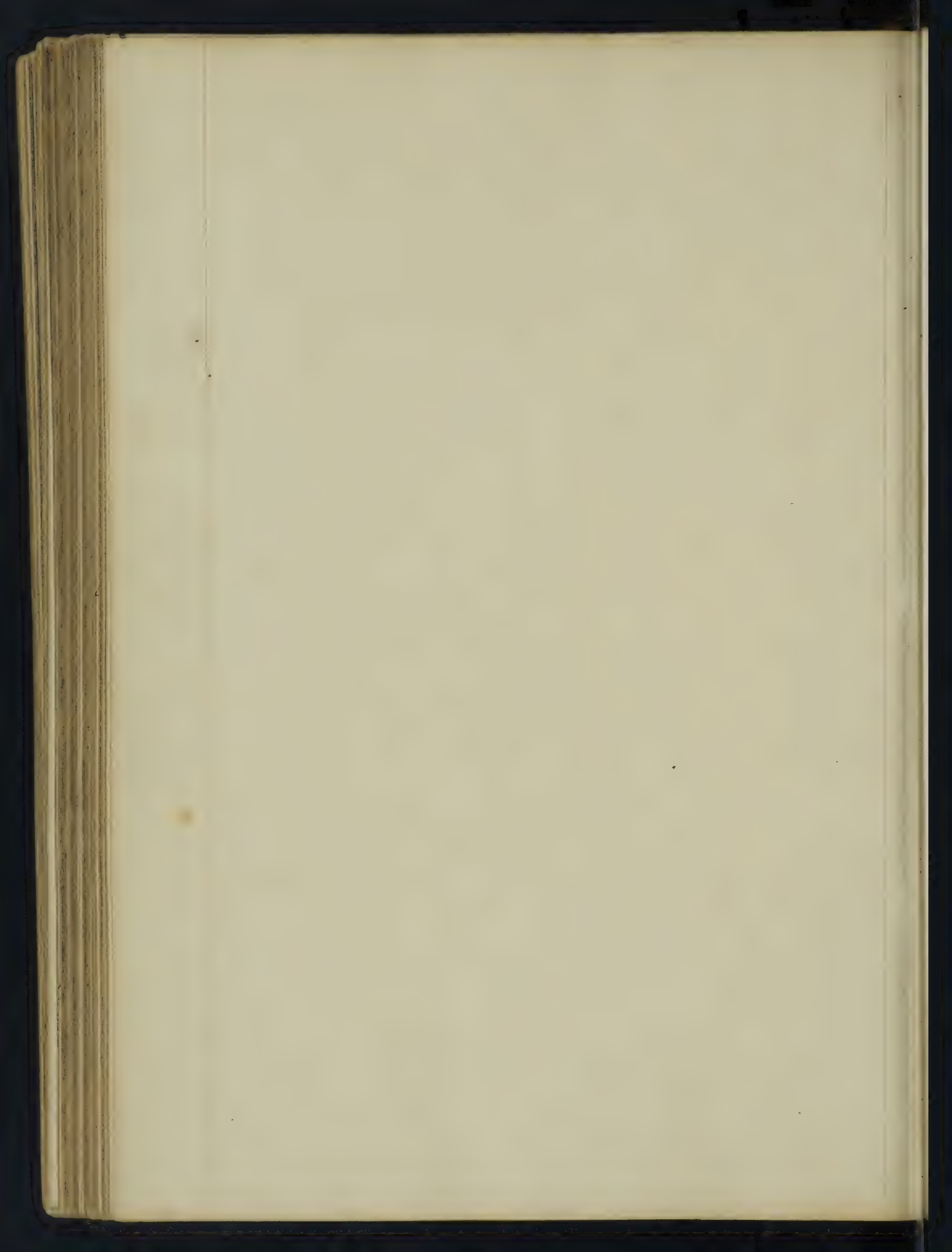


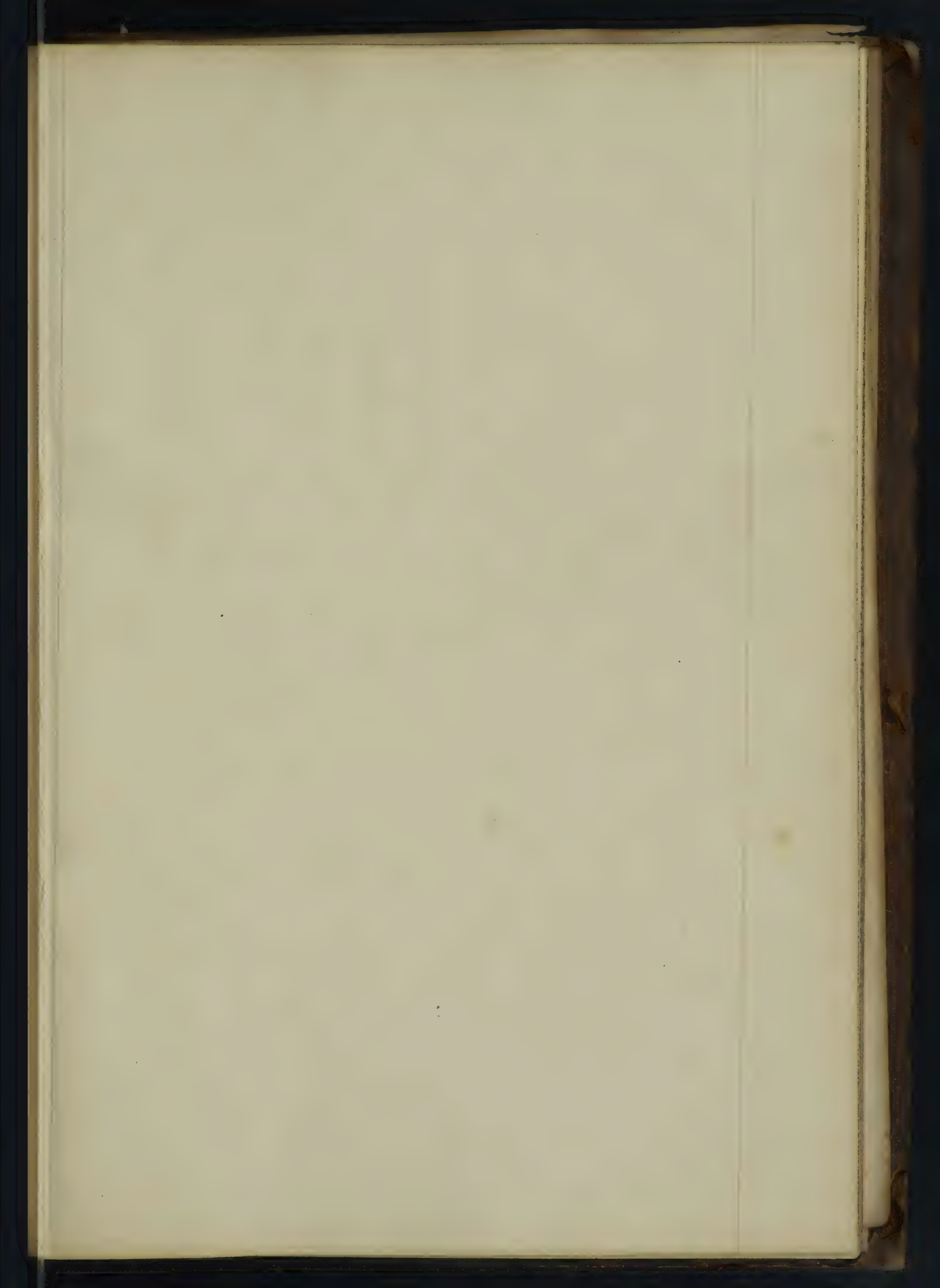


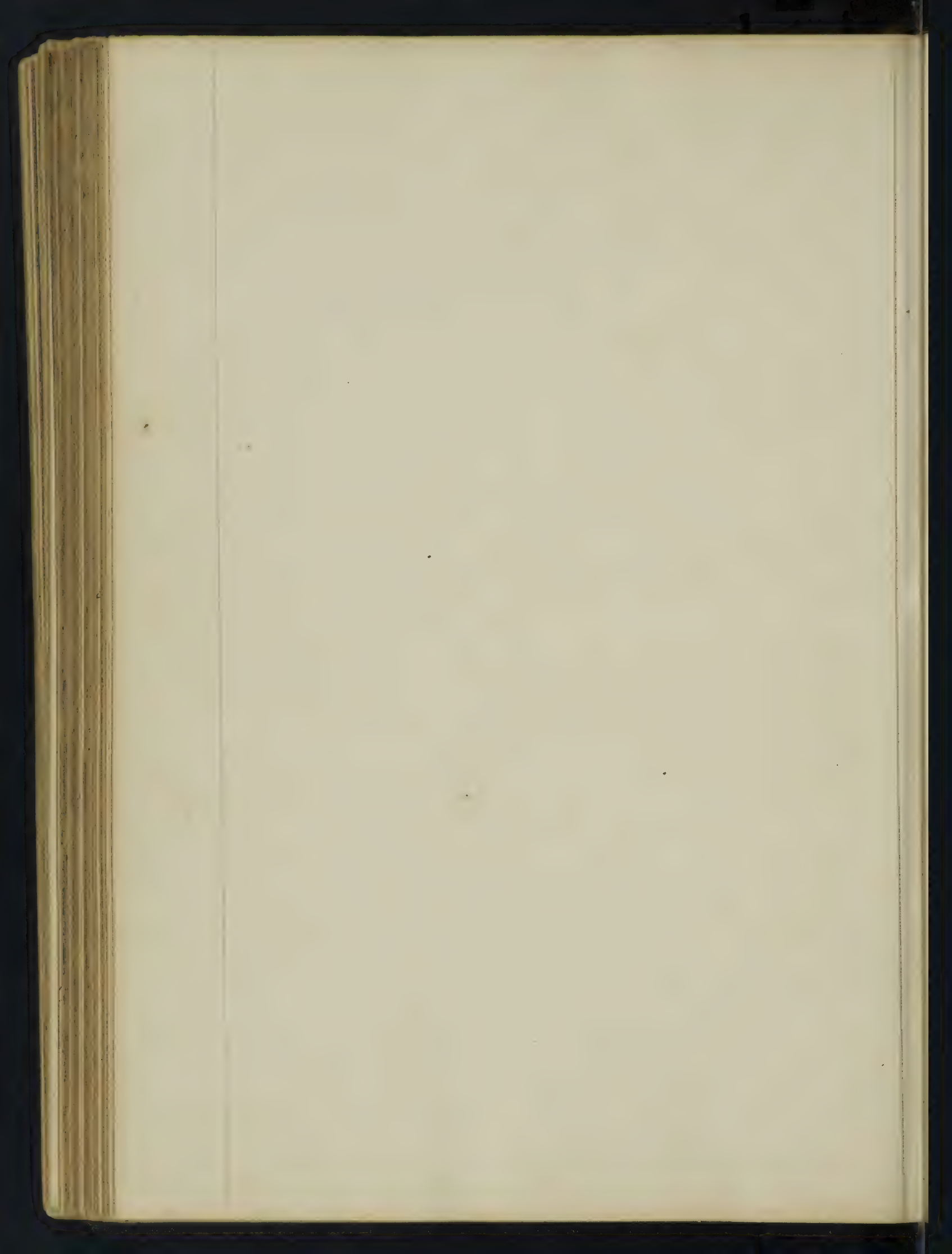


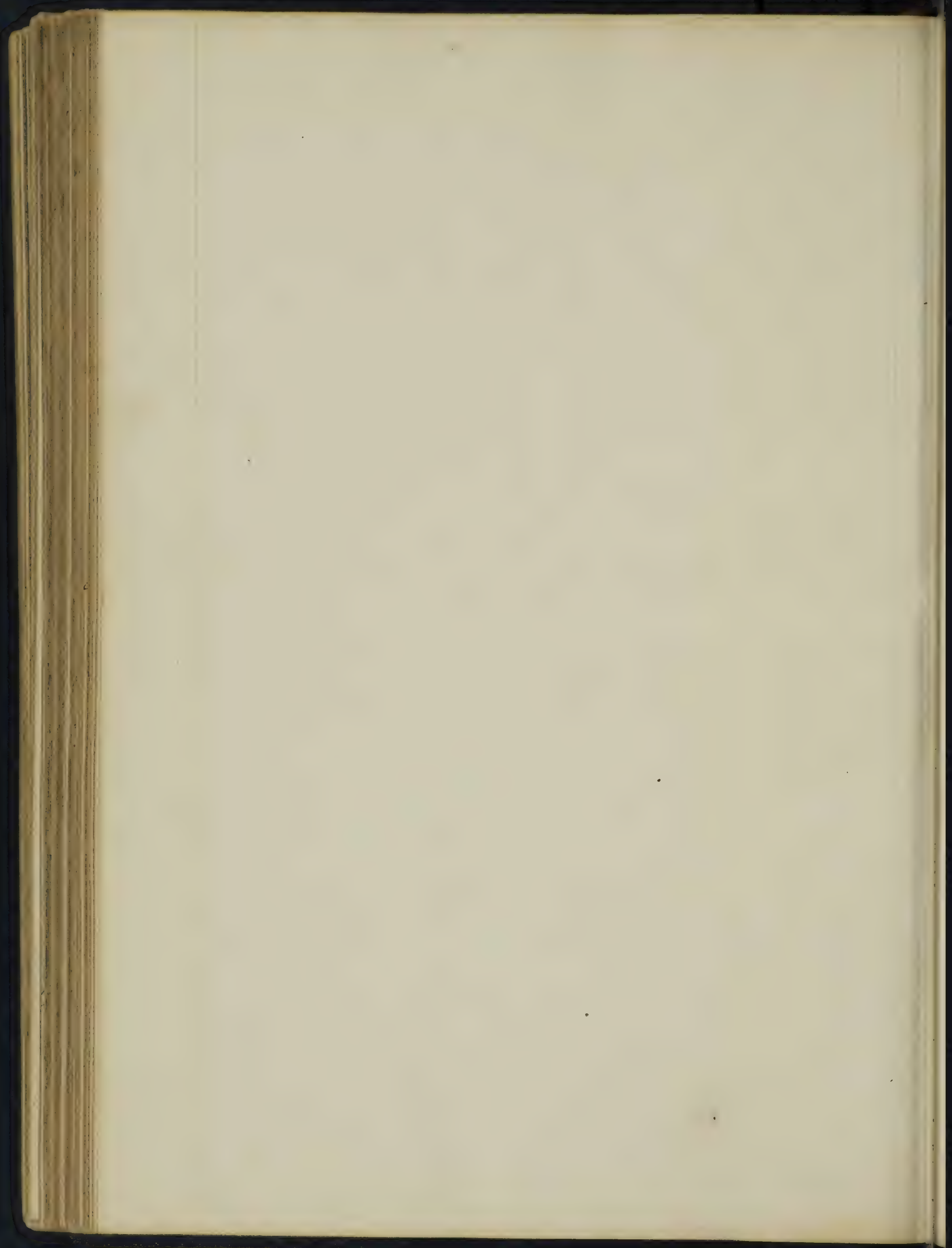


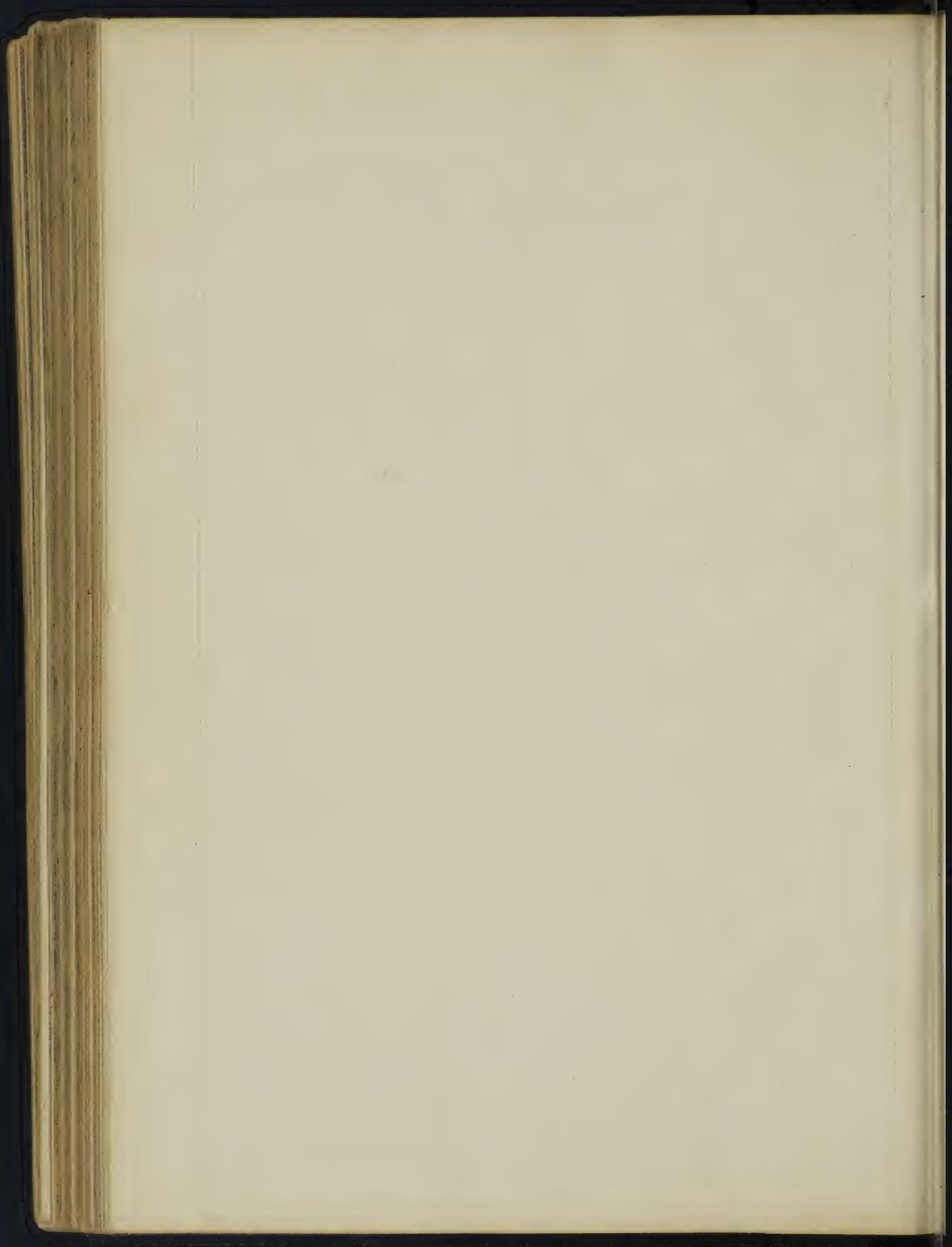


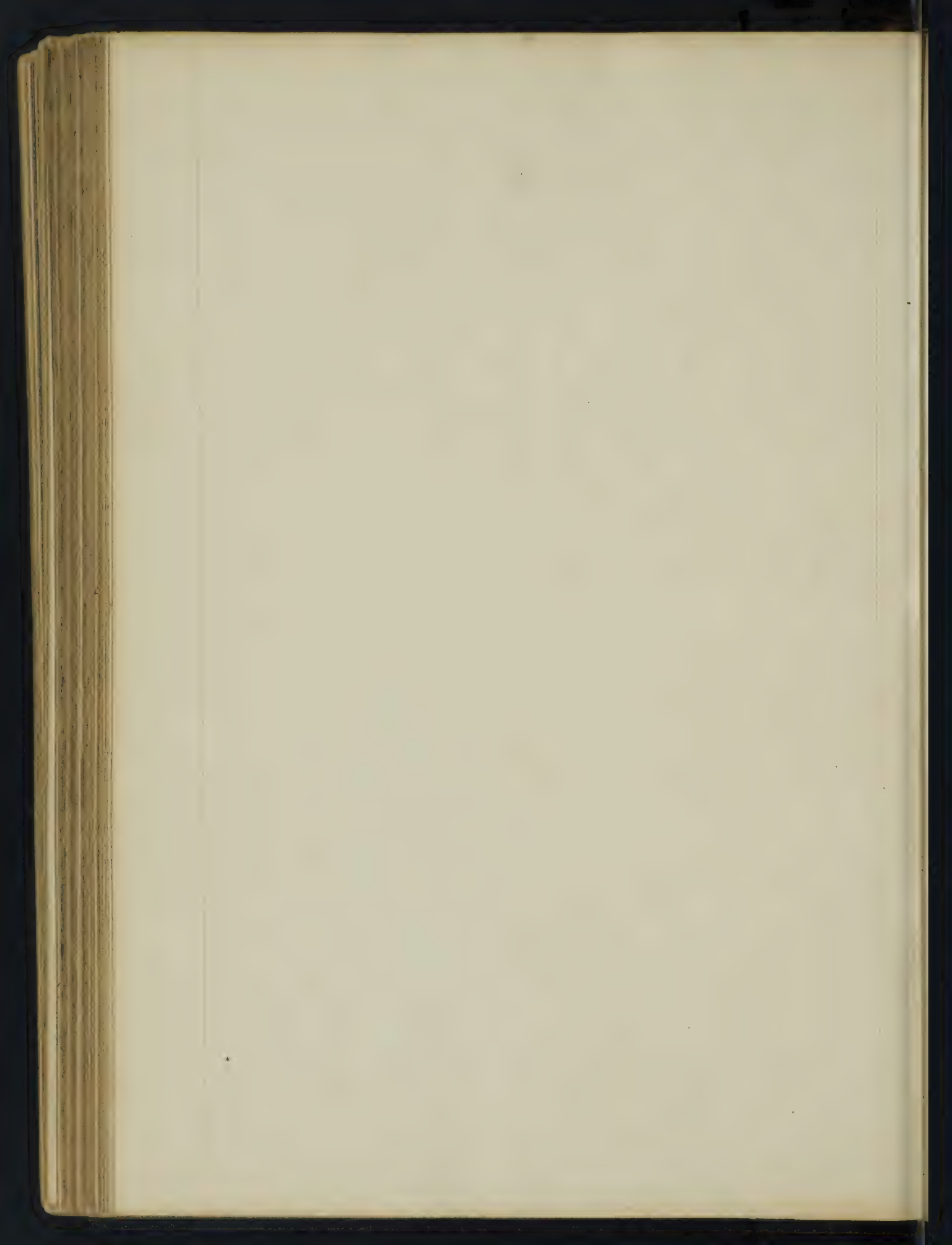


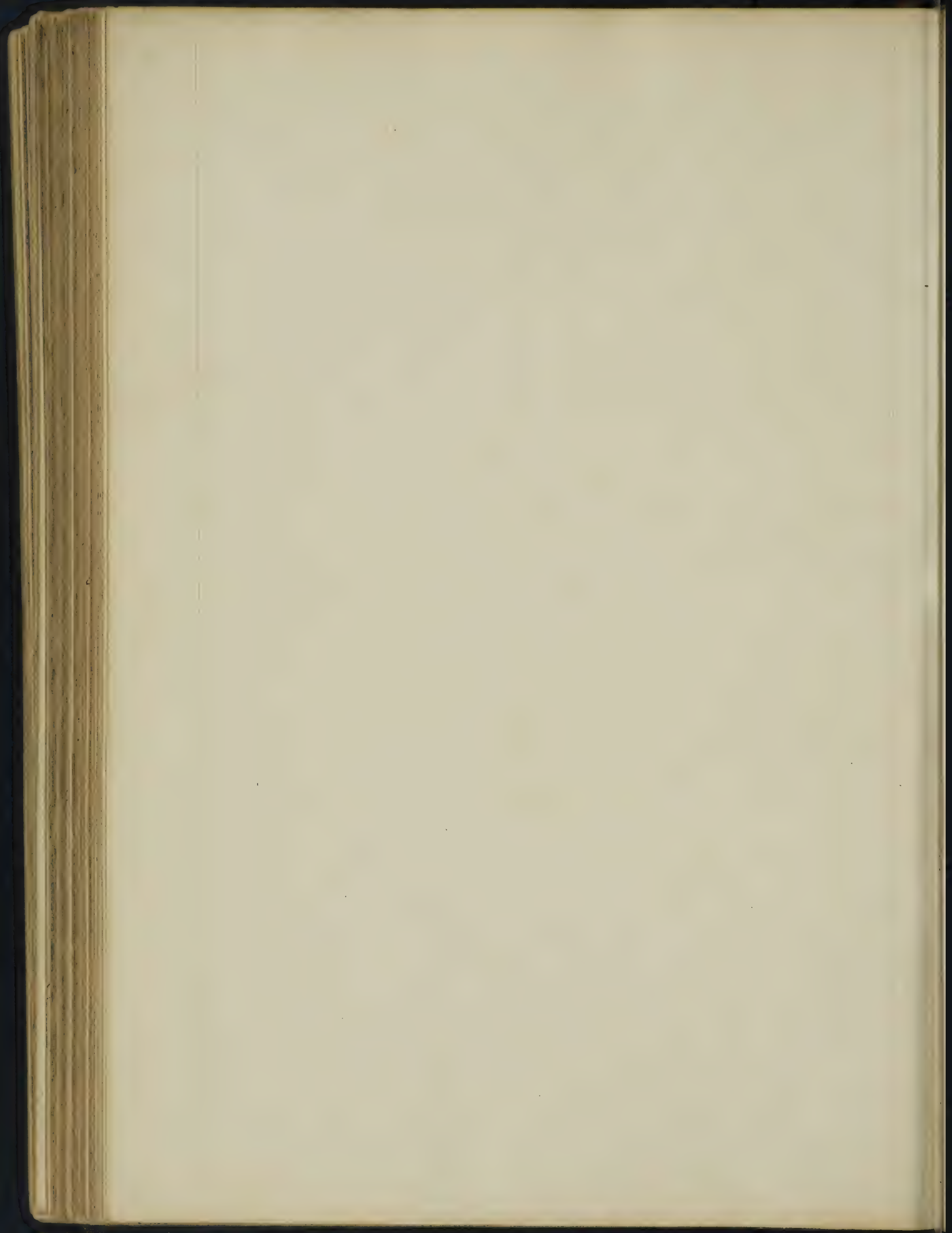


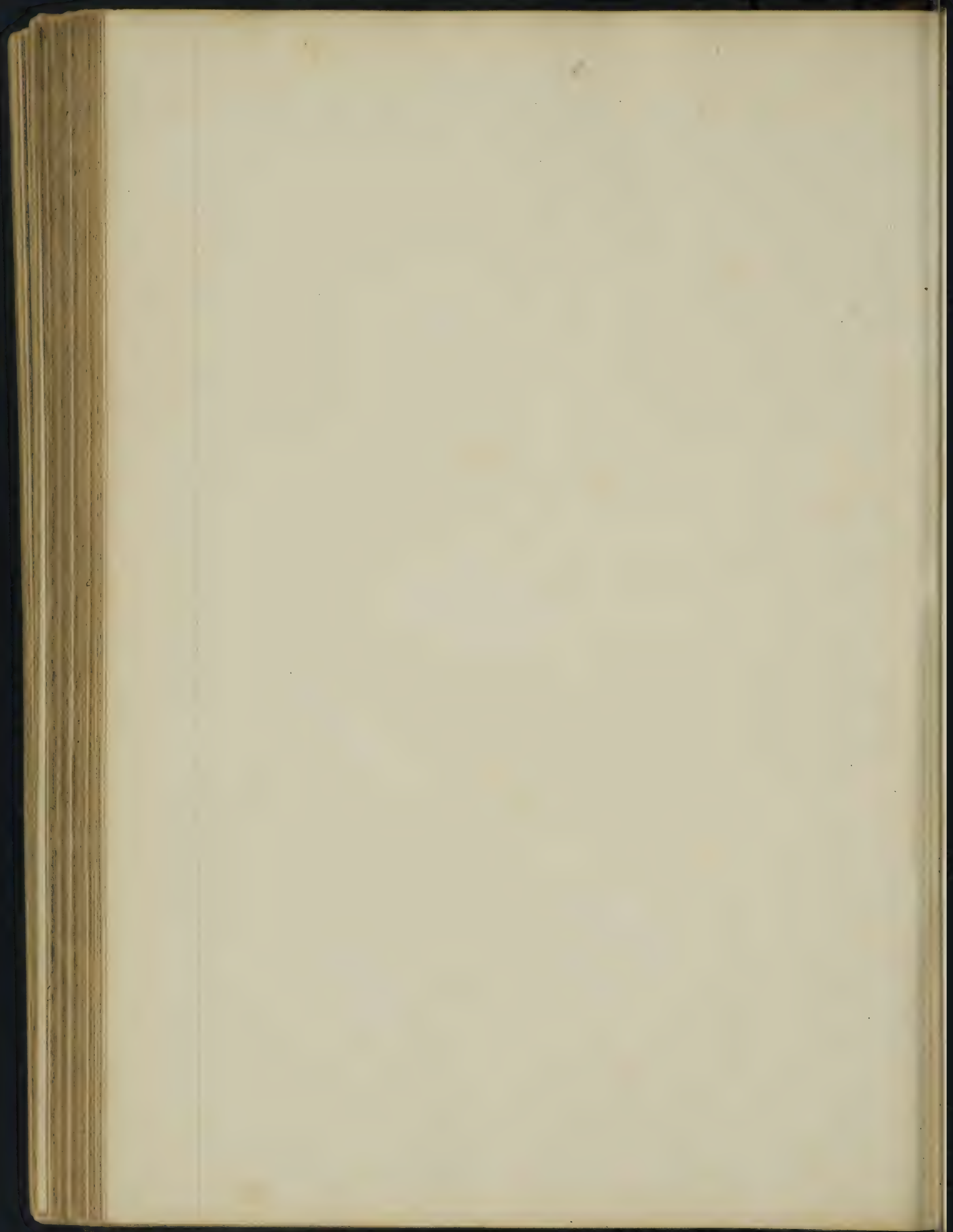


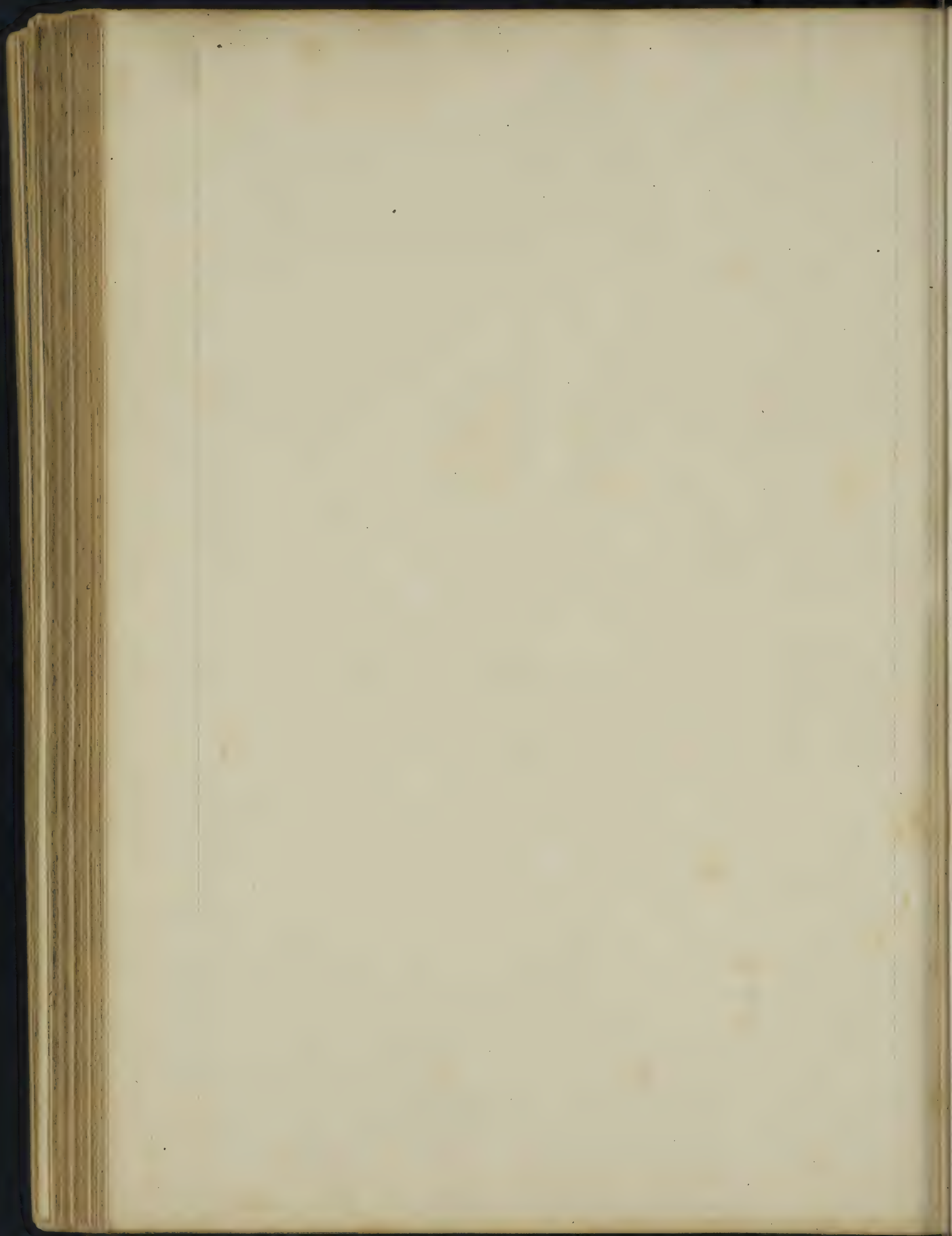


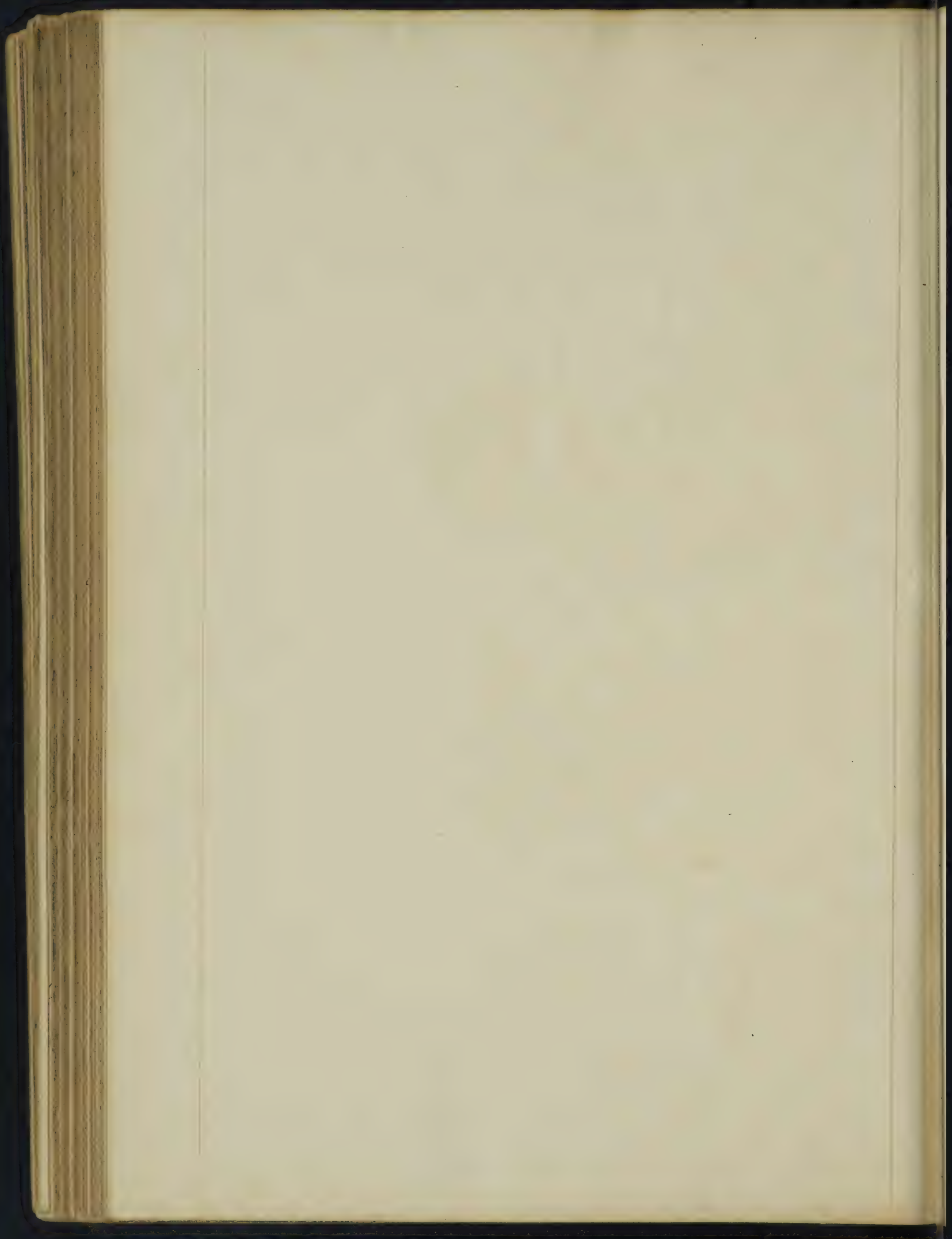


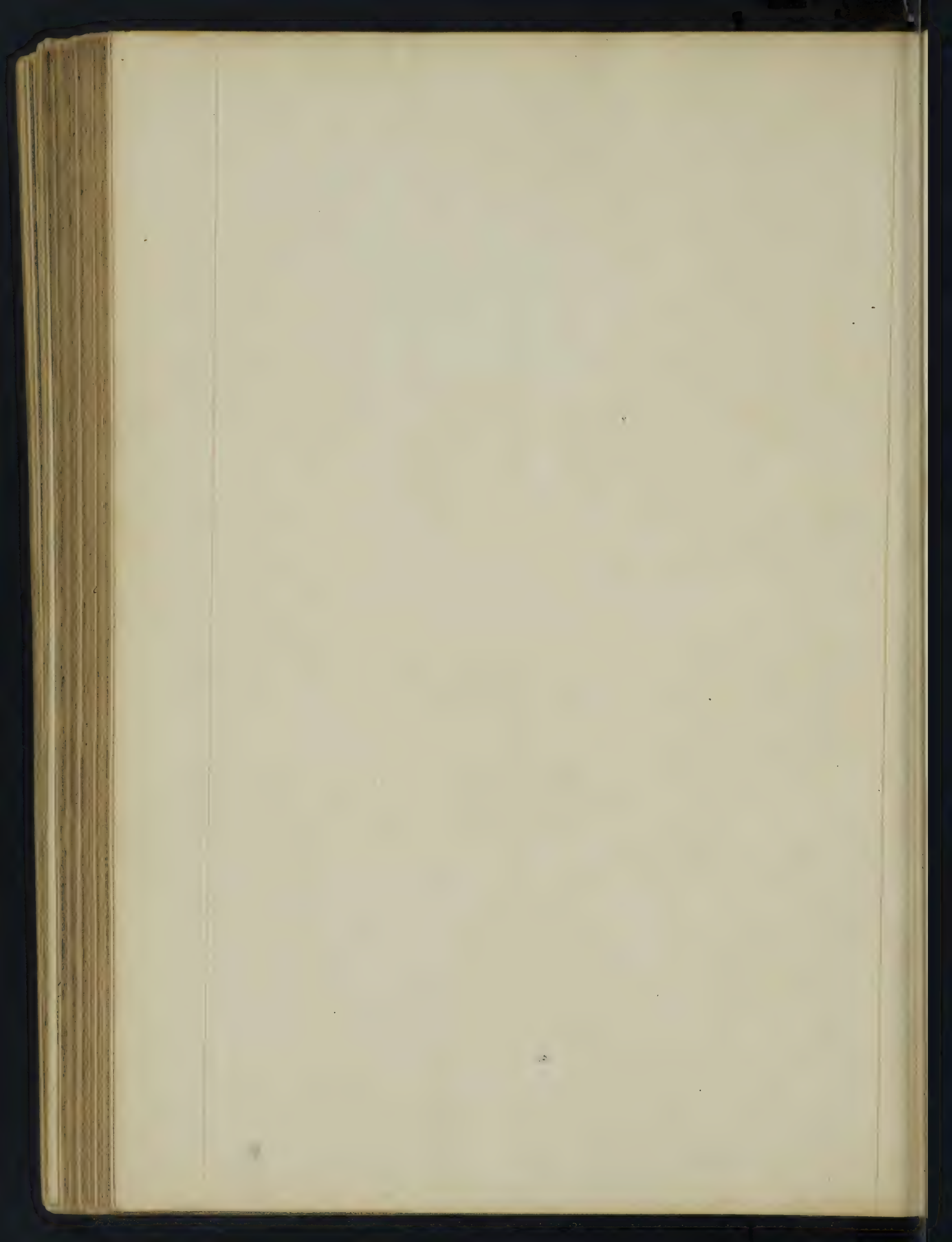


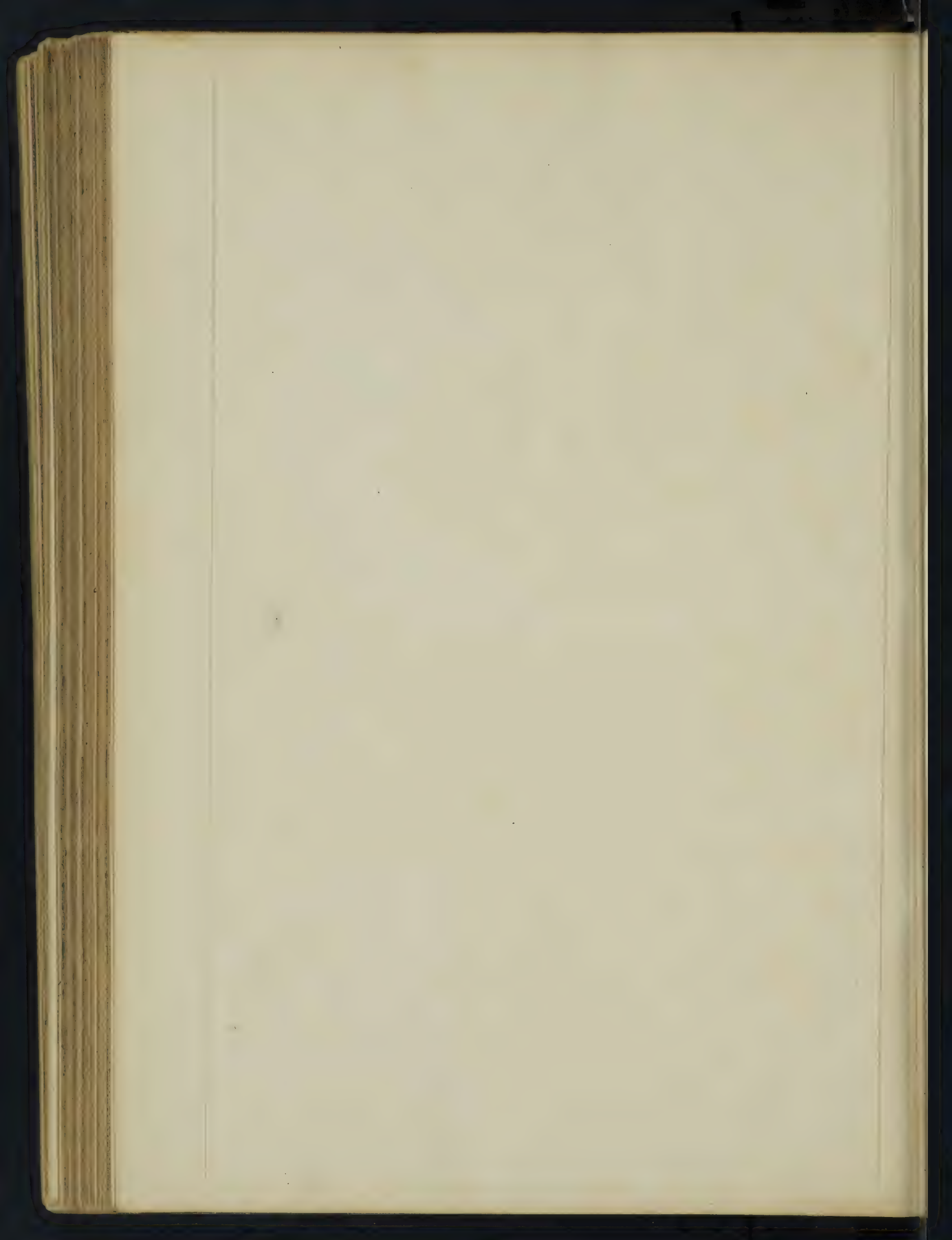


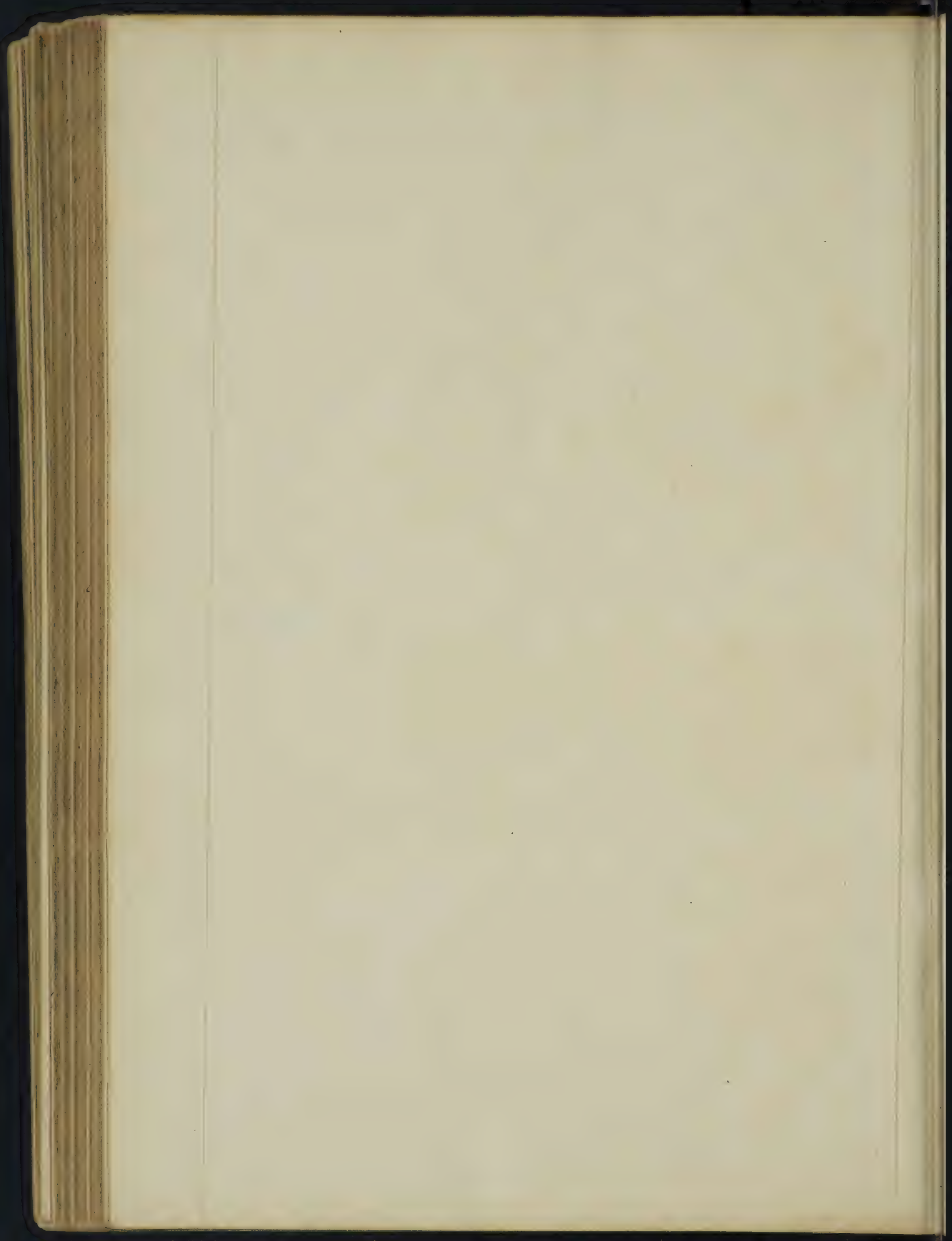


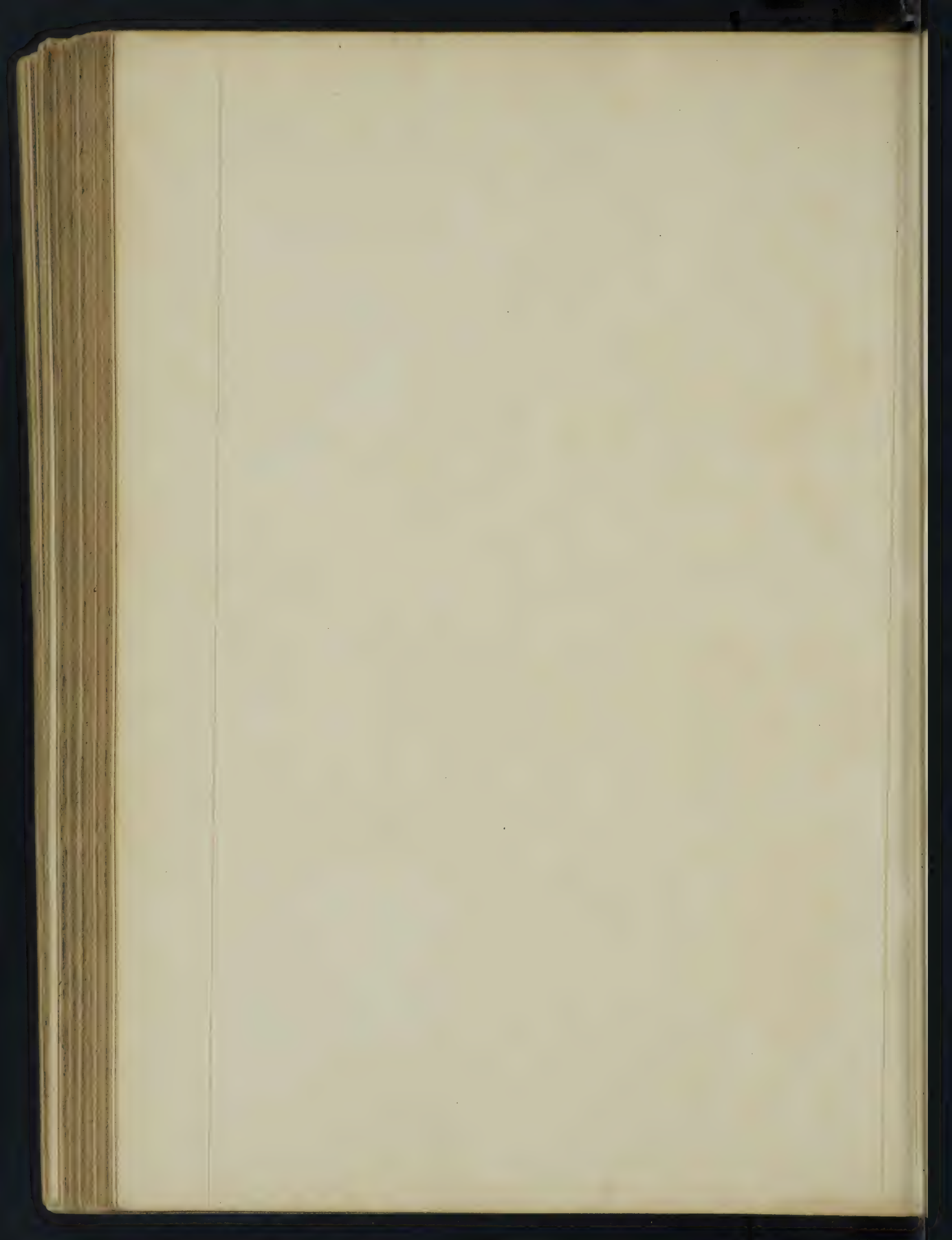


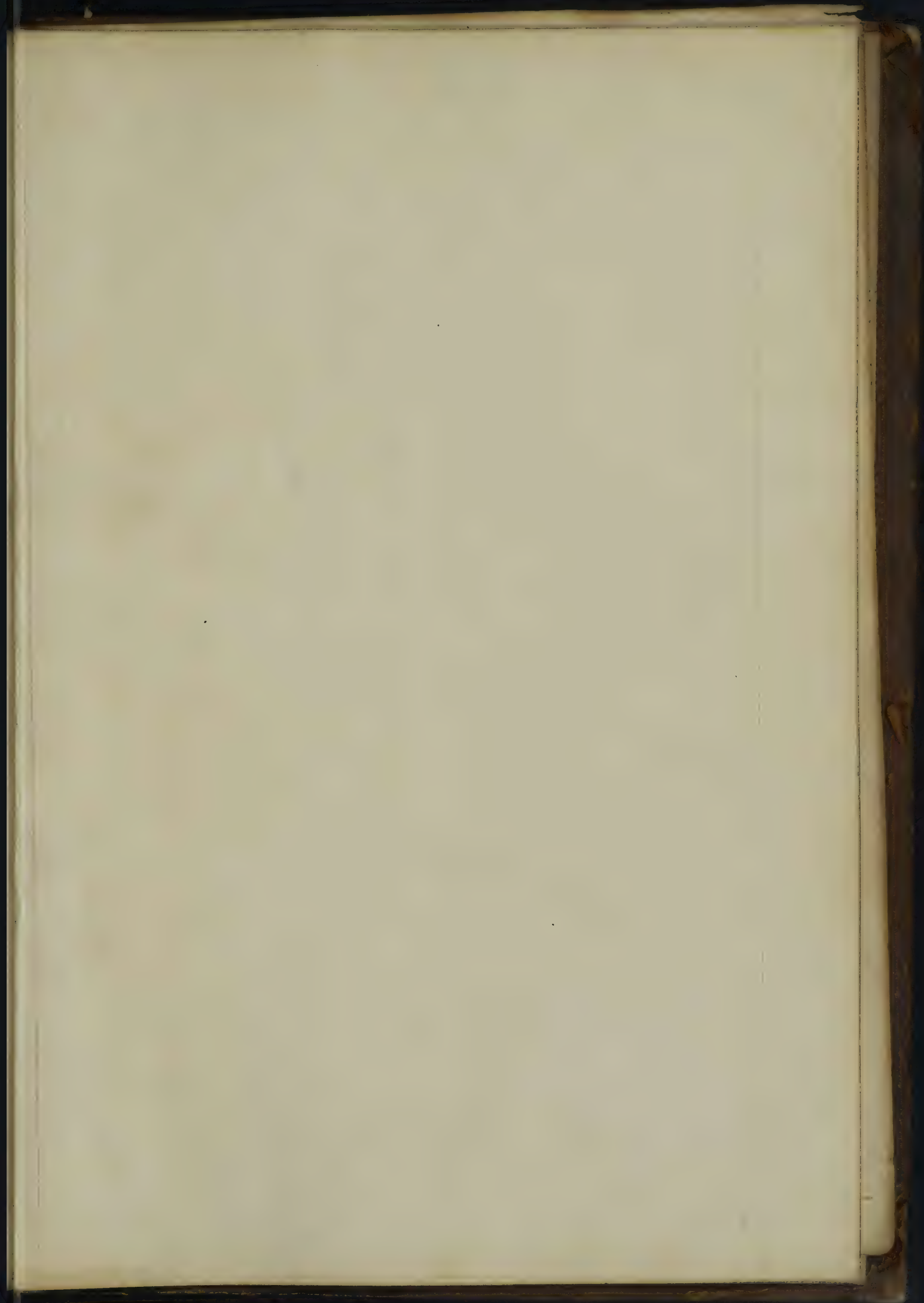


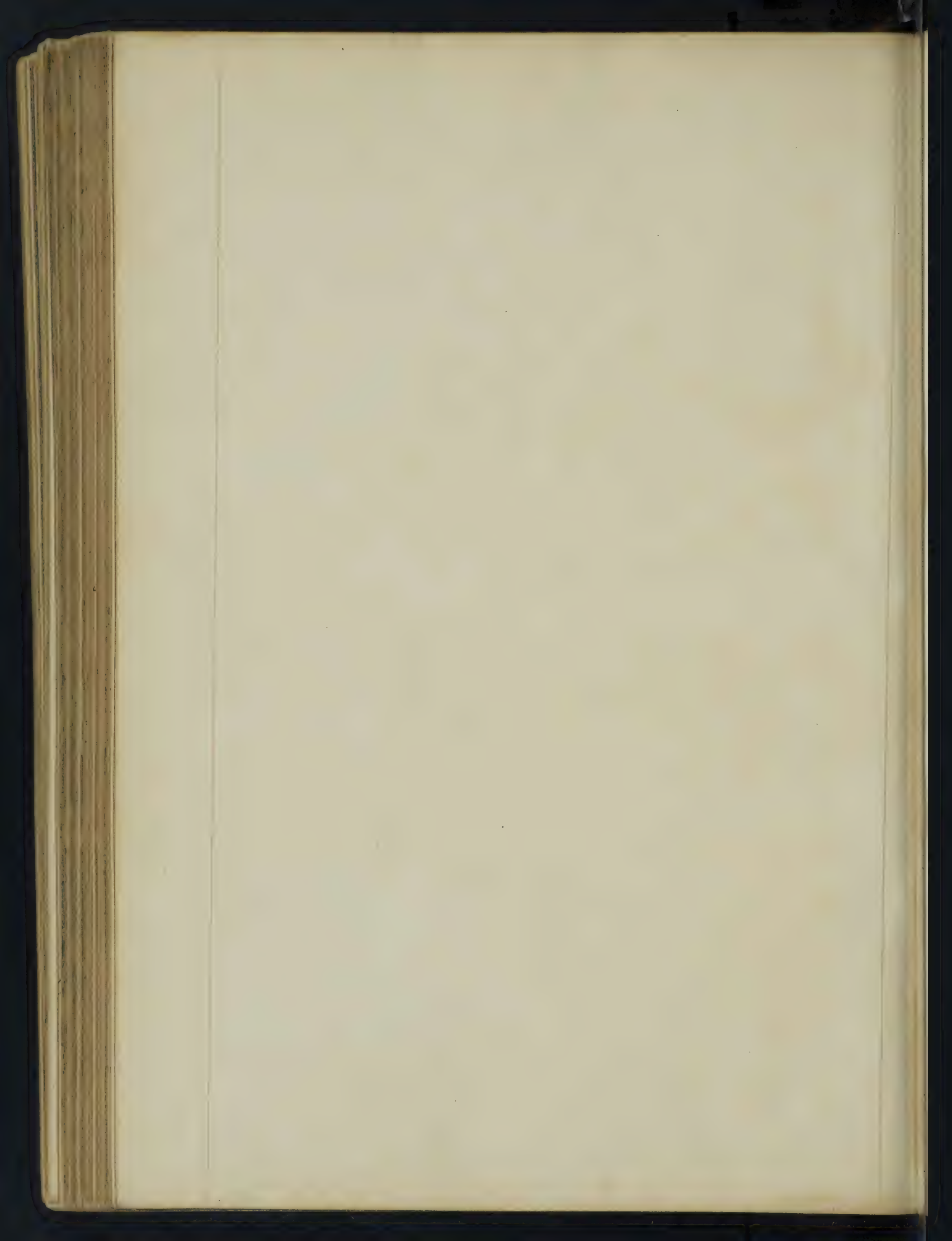


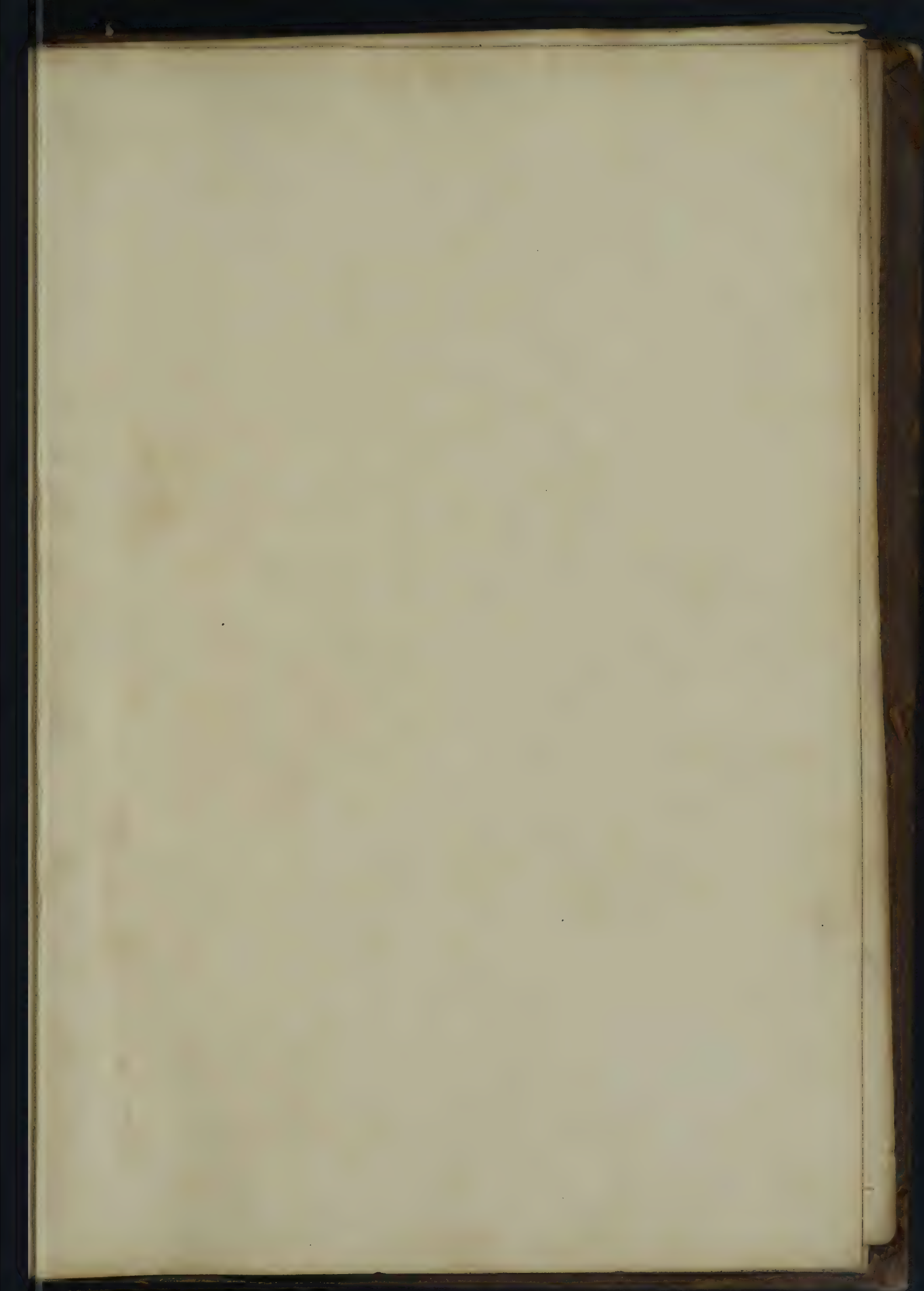


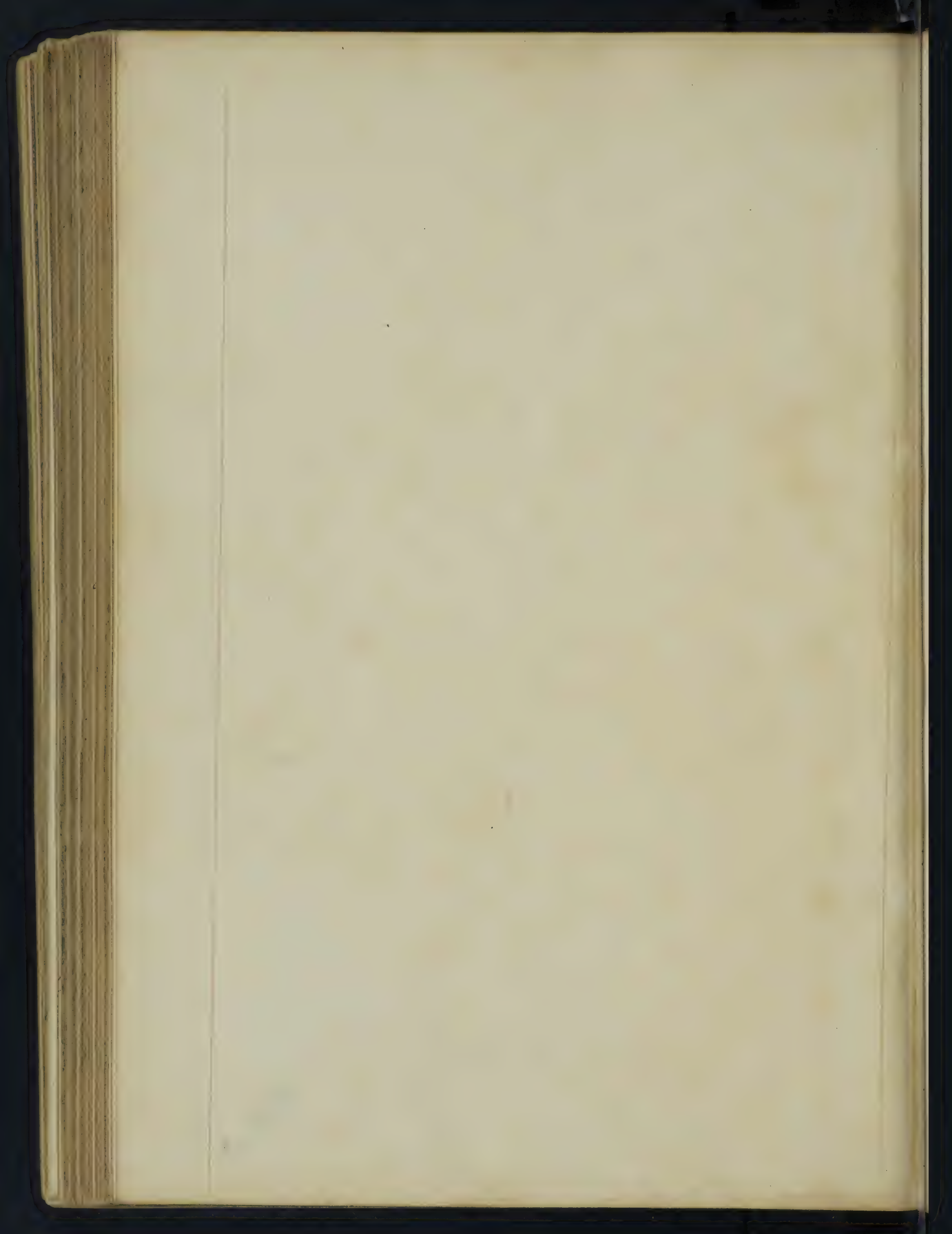


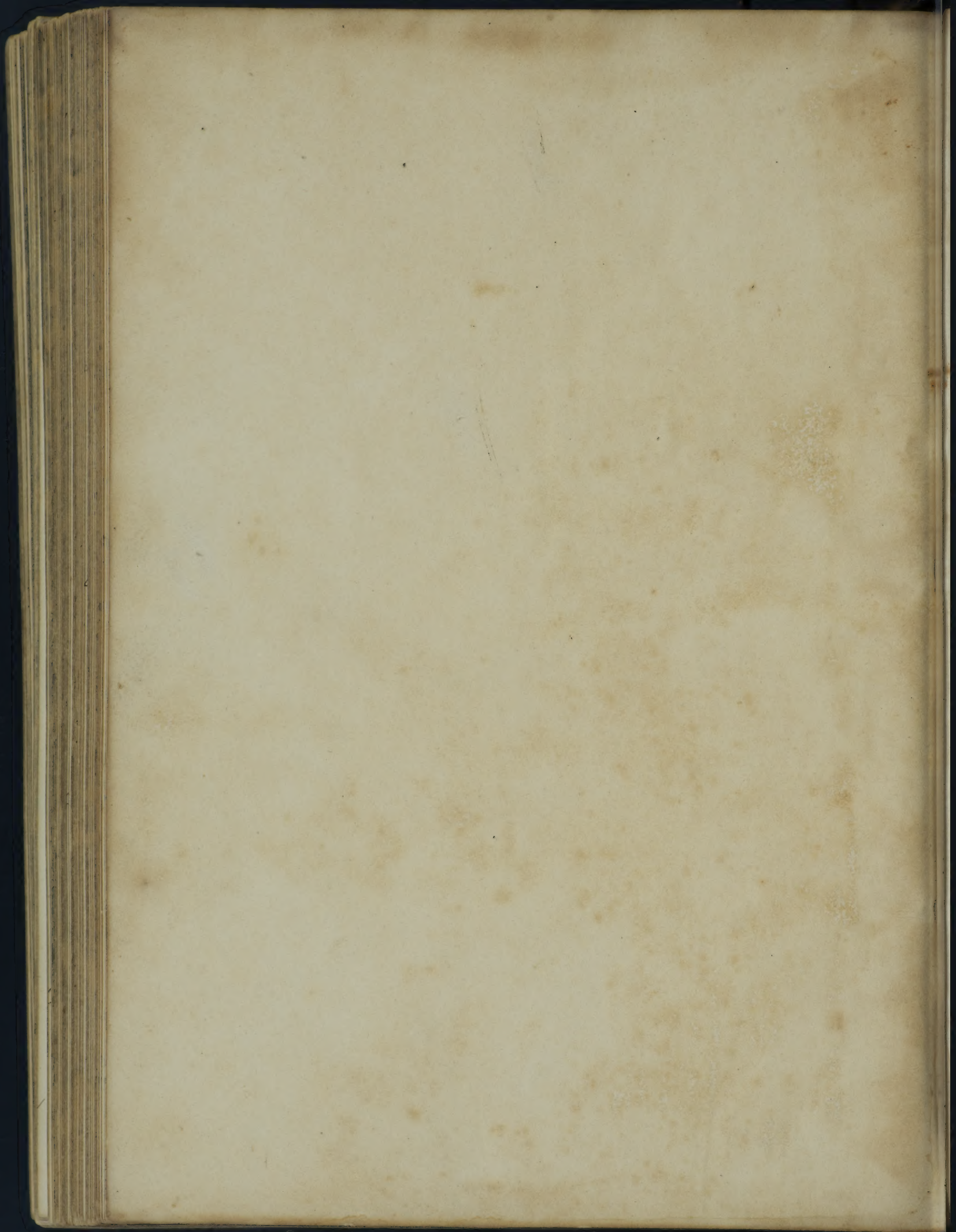












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